

J. C. Banner
A DIGEST

OF THE

STATUTES OF ARKANSAS

EMBRACING ALL

LAWS OF A GENERAL AND PERMANENT CHARACTER

IN FORCE AT THE CLOSE OF THE SESSION OF THE GENERAL ASSEMBLY OF
ONE THOUSAND EIGHT HUNDRED AND EIGHTY-THREE.

By **W. W. MANSFIELD.**

EXAMINED AND APPROVED BY

U. M. ROSE.

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CERTIFICATE OF EXAMINER.

LITTLE ROCK, January 27, 1885.

To the Governor:

SIR: I was appointed by your predecessor in office to examine the Digest of the Statute Laws, to be prepared in accordance with the provisions of an act of the general assembly of this state, entitled "An act to provide for revising and digesting the Statute Laws of the State of Arkansas," approved March 13, 1883.

Having performed the duty thus assigned to me, according to the best of my ability, I now certify that the Digest of the Statutes prepared by the Digester appointed in accordance with the provisions of that act is a complete and correct Digest of all public or general laws now in force.

Very respectfully, your obedient servant,

U. M. ROSE.

His Excellency, SIMON P. HUGHES.

PREFACE.

In preparing this volume, I have followed the plan of previous digests, by arranging the statutes under titles placed in alphabetical order, and by embracing those distributed to each principal head in a separate chapter. This arrangement of the laws is perhaps more convenient than any other which it was practicable at this time to adopt, and it has now become so familiar to the people that no change was believed to be desirable.

I have, so far as was consistent with the plan of the work, avoided the introduction of additional titles. A few of those used in the last revision have been discontinued or changed, and in several chapters there is a re-arrangement of the statutes. These changes are not very important, and, if they do not meet with approval, will, it is hoped, produce no confusion or inconvenience.

It has been suggested by some persons that in digesting the statutes, the Civil Code, as passed in 1868, should be printed at large as it was passed, and as it has been modified by amendments. My predecessor in the labor of arranging the statutes distributed the matter of the Civil Code under various heads, with which arrangement the bench and bar have become familiar. That circumstance affords one argument in favor of the conclusion that I came to in following his example. Another, and perhaps a better one, is to be found in the fact that in many cases, if the Civil Code had been printed in a body, the statute laws on various subjects, such as "Judgments," "Executions," "Evidence," and many others, must have appeared partly in the Code, and partly under other heads. On the whole, it has been thought best to make no change in this respect in the arrangement adopted by the digester in 1874.

By section one of the schedule to the constitution of 1874, all laws not in conflict with that instrument were continued in force "until amended or repealed by the general assembly." But the adoption of the constitution operated to modify many provisions in the statutes which it thus substantially continued; and, in revising these, such changes in their phraseology as were obviously necessary have been made.

Laws that were plainly abrogated by the adoption of a constitution with which they were not in harmony have, of course, been omitted. But I have

not regarded it as within the sphere of my duties to pass upon the validity of statutes enacted under the present constitution; and none of these have been treated as unconstitutional, except such as have been pronounced so by the supreme court.

I have been embarrassed by many questions as to the repeal of statutes by implication. Such repeals are not favored by the courts, and in doubtful cases I have not felt at liberty to omit important acts on the ground that others, without expressly repealing, have superseded them. I have usually directed attention to such questions by a marginal note.

The notes of decisions include, it is believed, nearly all the important cases in our published reports construing the constitutional and statutory provisions in connection with which they are made. The careful reader will probably find that they contain a few verbal inaccuracies in addition to those I have discovered; but I trust that they are generally correct, and that they will prove to be useful.

A few forms have been added to those published with the revision of 1874. In revising those appended to that work, I have made in some of them changes required by recent legislation, and have altered others, with the view of making them more serviceable to the inferior courts.

The index to the statutes was prepared by Mr. JOHN E. KNIGHT, and I am confident that it will be found to be full and accurate.

I am indebted to several gentlemen for valuable assistance in making the notes of decisions, and to others who have aided me in the course of my labors by their advice.

The revision act conferred no authority beyond what was necessary to enable the digester to present the existing laws in a convenient form. A digest prepared in the exercise of a power so limited may, perhaps, be said to perform one of its offices by disclosing the existence of defects, which legislation alone can supply or remove; and I indulge the hope that my work may in some degree assist the labor of those with whom it will rest to make our laws more perfect.

W. W. MANSFIELD.

OZARK, January 20, 1885.

NOTE.

Since the printing of the Digest, the attention of the Digester has been called to a supposed error in section 2652, which provides that elections for representatives in congress shall be held on the first Monday in September. The error is, however, only apparent, and not real. The section is literally copied from the act of January 23, 1875. The time for holding the election for representatives in congress is now fixed, by act of congress, for the Tuesday next after the first Monday in November. *Rev. Stat. U. S., sec. 25.* Although the latter statute controls, yet it does not repeal the state statute, which would become actively in force in case the Federal statute should be repealed.

REVISION ACT.

Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. That there shall be appointed by the governor of the State of Arkansas some suitable individual, whose duty it shall be to revise and digest all the statute laws of this state, of a general nature, which may be in force after the close of the present session of the general assembly, and arrange the same under appropriate heads, with proper reference, index, etc.

SEC. 2. That so soon as the digester shall have completed one or more chapters of said digest or revisal, he shall submit the same to the examination of some person versed in the law, to be appointed by the governor, upon whose certificate that such chapter or chapters is correct, and embraces all public or general laws then in force that, consistently with this act, should be included under such respective chapter or chapters, the digester shall proceed to invite proposals for printing and binding eight thousand copies of said digest by advertisement, to be published in two weekly newspapers printed in the City of Little Rock, for at least four weeks previous to the day named for opening and comparing the proposals which may be offered for printing and binding the digest; and on the day appointed the governor, auditor and digester shall proceed to compare such proposals as may have been received and contract with the lowest competent and responsible bidder, who will enter into bond, with sufficient security, to be approved by the governor, conditioned for the faithful execution of the contract in time for delivering the said copies on the first day of July, eighteen hundred and eighty-four, at the office of the secretary of state, and the examiner provided for herein shall receive for all of his services in examining the said digest the sum of one thousand dollars.

SEC. 3. That in addition to the duties of the digester, as specified in the foregoing section, he shall also be required to superintend the printing of said digest so far as to read and mark the proof-sheets while the work is in course of publication. *Provided*, that in case of the death of such digester, or other disqualifications, the governor of the state may appoint some suitable person to carry out the intentions of this act.

SEC. 4. That no special act of incorporation, acts for the appropriation of moneys, memorials, joint resolutions, or acts of a local or private nature, shall be embraced in the digest contemplated.

SEC. 5. That there shall be prefixed to and published with the digest provided for in the foregoing sections, the Constitution of the United States, with the amendments thereto, all the Constitutions of this State, with the amendments thereto, the acts of congress for the admission of the State of Arkansas

(ix)

into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes, the treaty of cession of Louisiana to the United States, the compact between the United States and this state, and the several acts of congress prescribing the mode of certifying judicial proceedings, records, etc., so as to have effect in the state to which they may be sent, a summary of the naturalization laws of the United States and the Declaration of Independence, the acts of congress making grants of lands to the State of Arkansas for any purpose whatever, and the digester shall append to and publish with the digest such forms, both civil and criminal, as may be useful to the justices of the peace of this state in the exercise of their jurisdiction.

SEC. 6. That there shall be prefixed to each chapter concise notes of contents of each section, in numerical order, and to the end of each act shall be added the date of the approval of the same, omitting the signature of the governor, the president of the senate and speaker of the house of representatives.

SEC. 7. That the digester appointed as provided for in the foregoing sections of this act shall be entitled to receive as a full compensation for his services the sum of three thousand dollars, out of any money in the treasury not otherwise appropriated, for which the auditor of the state shall draw his warrant upon the treasurer, upon the presentation of the certificate of the person to be appointed by the governor, as provided in the second section of said act, to examine such digest of the statute laws of this state when completed by said digester to the effect that the whole duty confided to said digester has been performed with fidelity.

SEC. 8. That the digest of the laws contemplated by this act shall be printed on good paper, the body of the work on long primer type, leaded with leads six to pica, the notes and index on minion or brevier type, pages of royal octavo size, or the size of pages in Gantt's Digest, now in use, in one volume, to be bound and lettered, in all respects, equal to Gantt's Digest now in use.

SEC. 9. That the said reviser and digester shall, in addition to the revising and compiling of the laws as aforesaid, make marginal notes under each chapter head containing abstracts and annotations of such decisions of the supreme court of this state as may have been made in construction of said statutes or constitution.

SEC. 10. That twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, to pay for the digesting, revisal, publishing and binding said digest.

SEC. 11. That the secretary of state shall, after reserving a sufficient number of copies to supply the officers entitled to a copy thereof, and the public librarians with which this state may have established an interchange of books, sell the remainder for the benefit of the state, at five dollars per copy. *Provided*, that there shall be reserved in the office of the secretary of state fifteen hundred copies for the use of the general assembly, and to supply loss by officers of counties.

SEC. 12. The contracting board shall, as soon as the digest is completed and before printing, take out a copyright of said digest in the name of the state. *Act March 13, 1883, as amended by act March 27, 1883.*

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ERRATA.

In syllabus of section 597, for "Board of Supervisors," read "County Court."

In section 1235, seventh line, for "prisoners," read "prisoner."

In section 1849, second line, for "misdeanor," read "misdemeanor."

In note (b) to section 2571, tenth line, for words, "The widow is not entitled to dower in partnership property," read more fully "A widow is not entitled to dower in partnership property until the claims of partners and creditors of the firm are satisfied."

In note (b) to section 4471, sixteenth line, for words, "The statute of limitations ceases at the death of the debtor, and the statute of non-claim commences to run," read "On the grant of letters of administration on the estate of a debtor, the statute of limitations ceases to run, and the statute of non-claim applies."

At end of section 2377, read "*Ib.*, sec. 323."

DECLARATION OF INDEPENDENCE.

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws and altering, fundamentally, the powers of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war; in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our LIVES, our FORTUNES and our SACRED HONOR.

JOHN HANCOCK.

NEW HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Mathew Thornton.

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

DELAWARE.

Cæsar Rodney,
George Read,
Thomas M'Kean.

DECLARATION OF INDEPENDENCE.

RHODE ISLAND.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW YORK.

William Floyd,
Phillip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith.

PENNSYLVANIA.

George Taylor,
James Wilson,
George Ross.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge,
Thomas Hayward, Jr.,
Thomas Lynch, Jr.,
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION
OF THE
UNITED STATES OF AMERICA.

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America (a).

ARTICLE I.

SECTION ONE. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION TWO. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen (b).

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for

(a) This constitution went into operation on the first Wednesday in March, 1789. *Owings v. Speed.*, 5 Wh., 420.

(b) The constitution having fixed the qualifications of members, no additional qualifications can rightfully be required by the states. *Barney v. McCreery Cl. & Hall*, 176; *Story's Const.*, § 624, 629; *Federalist No. 52*.

every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies (c).

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION THREE. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments (d) until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen (e).

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore* in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

(c) The executive of a state may receive the resignation of a member, and issue writs for a new election, without waiting to be informed by the house that a vacancy exists. *Mercer's case*, Cl. & Hall, 44; *Edwards' case*, *Ib.*, 92; *Newton's case*, February, 1847. Col. Yell had not resigned, but had become a colonel of volunteers in the army in the war against Mexico in 1846. The governor assumed that the two offices were incompatible, and after a resolution by the Arkansas legislature to that effect, he issued a proclamation for an election to fill the vacancy. Thomas C. Newton was returned, and the house refused to consider the question of vacancy. Vacancies, therefore, may be created by death, resignation, removal or accepting incompatible offices. See *Paschal's Annotated Const.*, 72.

(d) It is not competent for the executive of a state, during the recess of the legislature, to appoint a senator to fill a vacancy which *shall happen*, but has not happened at the time of the appointment. *Lanman's case*, Cl. & Hall, 871.

(e) A state can not add to these qualifications. See Note (b) *ante*.

SECTION FOUR. The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators (f).

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION FIVE. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner, and under such penalties, as each house may provide (g).

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member (h).

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION SIX. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest (i) during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased

(f) Under this section congress has exercised its power, and has fixed the times and manner of holding elections for senators—*Act of July 25, 1866*; 14 U. S. Stat., 243—and has also exercised its power in relation to the election of representatives, so far as to require the states to elect by districts—*Act of June 25, 1842*; 5 U. S. Stat., 491—and by providing for the supervision of such elections—16 U. S. Stat., 140, 433—and punishing fraudulent and illegal voting and registration thereat, and this congress may do. *The United States v. Terence Quinn*, 8 Blatch., 48.

(g) The returns from the state authorities are *prima facie* evidence only of an election, and are not conclusive upon the house. *Spaulding v. Mead*, Cl. & Hall, 16, 18, 29, 30, 41, 157; *Reed v. Cosden*, *Ib.*, 353. And the refusal of the executive of a state to grant a certificate of election does not prejudice the right of one who may be entitled to a seat. *Richards' case*, *Ib.*, 95.

(h) It seems to be settled that a member may be expelled for any misdemeanor which, though not punishable by any statute, is inconsistent with the trust and duty of a member. *Blount's case*, 1 Story's Const., § 838; *Smith's case*, 1 Hall's L. J., 459; *Brooks' case* for assaulting Senator Sumner in the senate chamber, for words spoken in debate. It extends to all cases where the offense is such as, in the judgment of the house, unfits the offender for parliamentary duties. 1 Bl. Com., 163; *Ib.*, Christian's Note, 167; *Rez v. Wilkes*, 2 Wilson R., 251; *Com. Dig., Parliament G.*, 5; 1 Hall's Law Journ., 459, 466; 1 Story's Const., § 838.

(i) They are privileged not only from arrest both on judicial and mesne process, but also from the service of a summons or other civil process, while in attendance on their public duties. *Geyer's Lessee v. Irwin*, 4 Dall., 187; *Nones v. Edrall*, 1 Wall. Jr., 191; 1 Story's Const., § 860. See *Coz v. McClenahan*, 3 Dall., 478. But they are not privileged during the session from the service of a summons. *Kimberly v. Butler*, 1 Chicago Legal News, 245. See also *Bump's Notes of Constitutional Decisions*, 12.

during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office (j).

SECTION SEVEN. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION EIGHT. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States (k);

To regulate commerce with foreign nations, and among the several states (k2), and with the Indian tribes;

(j) The acceptance by a member of any office under the United States, after he has been elected to and taken his seat in congress, operates as a forfeiture of his seat. *Van Ness' case*, Cl. & Hall, 122; *Yell's case* in 1846-7.

(k) Congress has constitutional power to issue treasury notes of the United States, and make them lawful money and a legal tender for the payment of debts, contracted as well before as after the passage of such acts. *Legal tender cases*, 12 Wall., 457. But the act of congress declaring that the notes of the United States shall be lawful money, and a legal tender for all debts, only applies to debts which are payable in money only, and not to obligations payable in terms "in specie," or "coin." *Trebilcock v. Wilson*, 12 Wall., 687.

(k2) The power of congress to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations and among the several states. *Gibbons v. Ogden*, 9 Wh., 1. It includes alike commerce by individuals, partnerships, associations and corporations. *Paul v. Virginia*, 8 Wall., 168. It includes the power to regulate the instruments of such commerce, whether by water or rail. *The Clinton Bridge*, 1 Woolw., 150. *Cooley v. The Board of Wardens*, 12 How., 299. It includes the power to determine what shall or shall not be deemed an obstruction of navigation, and includes necessarily the power to prevent any obstruction to the navigation of the navigable waters of the United States which are accessible from a state other than that in which they lie. *Penn. v. Wheeling and Belmont Bridge Co.*, 18 How., 421. *Silliman v. Hudson Bridge Co.*, 4 Blatch., 74 S. C., 2 Wall., 403. *Gilman v. Philad.*, 3 Wall., 713. And hence no state can authorize the construction of a bridge across a navigable river which will obstruct the commerce between separate states. *Ib.* Congress may regulate all bridges over navigable waters, remove offending bridges and punish those who shall thereafter erect them. *Ib.* And when called into exercise this power is paramount to and excludes that of the States. *Ib.* and *The United States v. Duluth*, 1 Dillon, 469. It prevents a state from imposing a discriminating tax on non-resident traders carrying on business within the state.

To establish a uniform rule of naturalization (l), and uniform laws on the subject of bankruptcies throughout the United States (m).

To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States (n);

To establish post-offices and post-roads (o);

Ward v. Maryland, 12 Wall., 418. And from imposing a stamp duty on bills of lading for goods exported therefrom. *Almy v. California*, 24 How., 169. Or requiring an importer to take out a license for the sale of imported goods in original packages. *Brown v. Maryland*, 12 Wh., 419. Or imposing a tax upon freight taken up within the state and carried out of it, or taken up without the state and brought within it. *Case of the State Freight Tax*, 15 Wall., 232.

It does not extend to commerce strictly internal and carried on entirely within the limits of a state, and that does not extend to or affect other states, though carried on by means of the navigable rivers of the United States. *The Bright Star*, 1 Woolw., 266. *The Daniel Ball*, 10 Wall., 557. It does not prevent a state from imposing a tax on the sales of goods and merchandise, the product of other states, though sold in the original packages, if such tax extends equally to all sales of like goods raised or produced in the state, and makes no discrimination against the products of other states or the rights of their citizens. *Woodruff v. Parham*, 8 Wall., 123 (see *Brown v. Maryland*, *supra*). And it makes no difference that the mode of collecting such tax is different if the amount is the same. *Hinson v. Lott*, *Id.*, 148. Nor a tax on exchange and money brokers. *Nathan v. La.*, 8 How., 73. And a state may prohibit the sale of intoxicating liquors though congress has imposed a license tax on such business, which the liquor vendor has paid. *Pervear v. Commonwealth*, 5 Wall., 475. And issuing a policy of insurance is not a transaction of commerce, and a state may by its laws discriminate against foreign insurance companies. *Paul v. Va.*, 8 Wall., 168. Nor is a statute of a state imposing a tax upon the gross receipts of railroad companies repugnant to the constitution of the United States, though the gross receipts are made up in part from freights received for transportation of merchandise from the state to another state, or into the state from another. *State Tax on Railway Gross Receipts*, 15 Wall., 284.

Nor does it inhibit the states from passing laws to regulate and control professions, pursuits, trades and business that fall within the definition "of the police power," such as inspection laws, quarantine laws, health laws of every description, as well as laws regulating the internal commerce of a state and those which respect turnpike roads, ferries, etc. *Gibbons v. Ogden*, 9 Wh., 203.

This power is, and must be from its very nature, incapable of any very exact definition or limitation. It extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property; and persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the state. No power over the subjects is granted to congress, and consequently they remain subject to state legislation. *Id.* and *Butchers' Benevolent Association of N. O. v. Crescent City Live Stock Landing and Slaughter-house Co.*, 16 Wallace. *Thorpe v. Rutland and Burlington R. R. Co.*, 27 Vermont, 149; 2 Kent, 340. *New York v. Miln*, 11 Pet., 102. *The License Tax*, 5 Wall., 462. *The United States v. De Witt*, 9 Wall., 41.

A statute of Missouri which prohibits driving or conveying any Texas, Mexican or Indian cattle into that state between the first day of March and the first day of November is in conflict with this clause. *Railroad v. Husen*, 96 U. S., 465.

The legislature of a state can not subject a person to a higher tax for selling imported wines or beer than that which it imposes for selling similar liquors manufactured in the state. *Tiernan v. Rinker*, 102 U. S., 123. See also *Guy v. Baltimore*, 100 U. S., 434; *State v. Kate Marsh*, 37 Ark., 356; *State v. McGinnis*, 37 Ark., 362.

(l) The power to pass naturalization laws would seem to be exclusively in congress. 2 Wh., 269, *United States v. Villato*, 2 Dall., 372. *Thurlow v. Massachusetts*, 5 How., 585. *Smith v. Turner*, 7 Ib., 556. *Golden v. Prince*, 3 W. C., 314.

(m) The states have authority to pass bankrupt laws, provided they do not impair the obligation of contracts, and provided there be no act of congress in force to establish a uniform system of bankruptcy conflicting with such laws. *Sturges v. Crowninshield*, 4 Wh., 122. *McMillan v. McNeill*, *Id.*, 209. But an act of the state legislature which discharges a debtor from all liability for debts contracted previous to his discharge, on his surrendering his property for the benefit of his creditors, is invalid, so far as it attempts to discharge the contract. *Farmers' and Mechanics' Bank v. Smith*, 6 Wh., 131. A mere insolvent law, however, is not within the prohibition. *Ogden v. Saunders*, 12 Wh., 213. *Mason v. Haile*, *Id.*, 370. *Boyle v. Zacharie*, 6 Pet., 348, 635. *Beers v. Haughton*, 9 Ib., 329.

(n) A state may pass laws prohibiting and punishing the counterfeiting of the coin and paper currency issued under the authority of congress. *Fox v. Ohio*, 5 How., 433. *The United States v. Marigold*, 9 How., 560. *Story's Const.*, § 1123 and note.

(o) Under this power congress may designate what shall be carried in the mail, and what excluded. But in the enforcement of regulations excluding matter from the mail, letters and sealed packages subject to letter postage can be opened and examined only under a warrant such as is required when papers are subjected to search in one's own household. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers thus closed against inspection, wherever they may be. *Ex parte Jackson*, 96 U. S., 727.

Regulations excluding matter from the mail may be enforced through the courts upon competent evidence of their violation obtained in other ways than by the unlawful inspection of letters and sealed

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent (p) of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dock-yards and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION NINE. The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it (q).

packages; and with respect to objectionable printed matter, open to examination, they may in some cases also be enforced by the direct action of the officers of the postal service upon their own inspection, as where the object is exposed and shows unmistakably that it is prohibited, as in the case of an obscene picture or print. *Ib.*

(p) The right of exclusive legislation carries with it the right of exclusive jurisdiction. When, therefore, a state legislature has given its consent to a purchase of land by the general government, for the purposes enumerated in the constitution, the state jurisdiction is completely ousted. *The United States v. Ames*, 1 W. & M., 76. *United States v. Coryell*, 2 Mass., 60, 6 Opinion, 577. The states have not the right to tax lands purchased by the United States for public purposes, although the consent of the legislature may not have been given to the purchase. *United States v. Wise*, 2 Wall., Jr., 72, and see 7 Opinion, 628. After a cession by a state it can not take cognizance of any acts done in the ceded places after the cession; and the inhabitants of those places cease to be inhabitants of the state, and can no longer exercise any civil or political rights under the laws of the state. But if there has been no cession the state jurisdiction still remains. *The People v. Godfrey*, 17 John., 225. *Commonwealth v. Young*, 1 Hall's Journal of Jurisprudence, p. 47. 1 Kent's Com., 403, 404, ch. 28. Rawle's Const., ch. 27, pp. 238, 240. Story's Const., § 1127.

(q) The power to suspend this writ was first exercised by congress by the act of March 12, 1863. 12 U. S. Stat., 755. The privilege of the writ can only be suspended by act of congress or by the president acting under authority of an act of congress. *Ex parte Merryman*, Taney's Decisions, 246. *McCall v. McDowell*,

No bill of attainder (r) or *ex post facto* law (s) shall be passed.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state.

SECTION TEN. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit (t); make anything but gold and silver coin a tender in payment of debts (u); pass any bill of attainder, *ex post facto* law (v) or law impairing the obligation of contracts (w), or grant any title of nobility.

1 *Abb. U. S. R.*, 212. 8 *Opinion*, 365. 2 *Abb. Nat. Digest*, 611, note. But it has been held that the president may do so without the intervention of congress. 10 *Opinion*, 74. *Ex parte Field*, 5 *Blatch.*, 63. *Proc. of President of Sept. 24, 1862.* 13 *U. S. Stat.*, 730.

The federal judges have exclusive jurisdiction on *habeas corpus* whenever the applicant is illegally restrained of his liberty under or by color of the authority of the United States, whether by virtue of a formal commitment or otherwise. *Ableman v. Booth*, 21 *How.*, 506. And it is now settled that the state courts can not discharge a person illegally held in the military service of the United States. *Tarble's case*, 13 *Wall.*, 397. If the state judge or court is advised by the petition for the writ that the applicant is confined under the authority, or claim and color of authority, of the United States by an officer of that government, the writ should be refused. Where that fact does not appear in the application for the writ, but is made to appear in the return thereto, the state judge or court, being thus judicially apprised that the party is in custody under the authority of the United States, can proceed no further. *Ib.*

(r) A bill of attainder is a legislative act which inflicts punishment without a legal trial, and it includes pains and penalties. It may be directed against an individual, or a whole class, and inflict punishment absolutely or conditionally. The constitution of Missouri, which required an expurgatory oath of all priests, teachers, etc., was, in effect, a bill of attainder. *Cummings v. State of Missouri*, 4 *Wall.*, 323, 325. The test oath required of attorneys of United States courts by act of Congress of 2d July, 1862, 12 *U. S. Stat.*, 502, is in the nature of a bill of pains and penalties, and is in contravention of this clause of the constitution and void. *Ex parte Garland*, 4 *Wall.*, 377.

(s) An *ex post facto* law is one that punishes as a crime an act done before its passage, and which, when committed, was not punishable; a law that aggravates a crime, or inflicts a greater punishment for it than the law annexed to it when committed; or, a law that alters the legal rules of evidence in order to convict. *Caldwell v. Bull*, 3 *Dall.*, 390. *Watson v. Mercer*, 8 *Pet.*, 88. *Locke v. New Orleans*, 4 *Wall.*, 172. *Cummings v. State of Missouri*, *Ib.*, 277. Within the meaning of the constitution any law is *ex post facto* which is enacted after the offense was committed, and which, in relation to it or its consequences, alters the situation of the accused to his disadvantage. *Kring v. Missouri*, 107 *U. S.*, 221. This provision can not be evaded by giving a civil form to that which is, in substance, criminal; and to make the enjoyment of a right dependent upon an expurgatory oath is equivalent to an absolute denial of the right, and such denial enforced for a past act is nothing less than punishment imposed for that act. *Cummings v. State of Missouri*, 4 *Wall.*, 327. The phrase does not apply to laws operating retrospectively on civil proceedings, affecting private rights, and such laws are constitutional when they do not impair the obligation of contracts. *Satterlee v. Matthewson*, 2 *Pet.*, 380. *Watson v. Mercer*, 8 *Pet.*, 88. *Charles River Bridge v. Warren Bridge*, 11 *Pet.*, 420. *Baltimore and S. R. R. Co. v. Nesbitt*, 10 *How.*, 39. *Carpenter v. Penn.*, 17 *How.*, 456. *Locke v. N. O.*, 4 *Wall.*, 172, and see *Martindale v. Moore*, 3 *Blatch.*, 275.

(t) A bill of credit, within this prohibition, is paper issued by a state, designed to circulate through the community for its ordinary purposes, as money on the credit of the state. *Craig v. Missouri*, 4 *Pet.*, 410. *Byrne v. Missouri*, 8 *Pet.*, 40. The term bills of credit, as here used, does not include ordinary bank notes, though the state owns the entire stock and is ultimately liable for the redemption of the bills. *Briscoe v. Bk. Ky.*, 11 *Pet.*, 251, 317. *Darrington v. Bk. Ala.*, 13 *How.*, 12.

(u) But congress may. See note (k) *ante*.

(v) For definition of these terms see notes (r) and (s) *ante*.

(w) The obligation of a contract consists in its binding force on the party who makes it, and this depends on the laws in existence when it is made. Hence, a law staying the enforcement of mortgages for a year and

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION ONE. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of

requiring an appraisement of the property, and prohibiting a sale for less than a given proportion of the appraised value, is invalid in its operations upon previous mortgages. *Bronson v. Kinzie*, 1 How., 311. *McCracken v. Haycard*, 2 How., 608. *Howard v. Bugbee*, 24 How., 461. And see *Woodruff v. Trapnall*, 10 How., 205. *Curran v. Arkansas*, 15 How., 310. *McGee v. Mathis*, 4 Wall., 156. A statute which makes valid a contract which, by the law in force at the time it was made, was not valid is not obnoxious to this provision of the constitution. To create a contract, or give effect to an illegal, defective or void contract, does not impair the obligation of a contract. *Satterlee v. Matthewson*, 2 Pet., 380, and other cases cited in note (s) *ante*.

The objection that a contract is illegal, and that no judgment can, therefore, be rendered upon it, is not allowed from any considerations of favor to those who allege it, and hence when the legislature relieves a contract from the imputation of illegality, either by affirmative legislation or by the repeal of the law authorizing such a defense, neither of the parties to the contract are in a condition to insist on this objection. *Whitewater Valley Canal Co. v. Vallette*, 21 How., 414. 7 *Blackf.*, 475. 8 *Ind.*, 27. *Woodruff v. Scruggs*, 27 Ark., 26. *Welch v. Wadsworth*, 30 Conn., 149. But while the constitution forbids the states from passing laws impairing the obligations of contracts, it does not forbid Congress. *Bloomer v. Solley*, 5 McLean, 165. *Frans v. Eaton*, 1 Pet., C. C. 327. *Op. Justice Miller*, *Hepburn v. Griswold*, 8 Wall., 637. *Opinion of the Court, per Strong, Justice, in legal tender cases*, 12 Wall., pp. 547-8.

The obligation of a contract in the constitutional sense is the means provided by law by which it can be enforced—by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation. *Louisiana v. New Orleans*, 102 U. S., 203. But the legislature may enlarge, limit or alter modes of proceeding and forms to enforce a contract, provided it does not deny a remedy or so embarrass it with conditions or restrictions as seriously to impair the value of the right. *Peniman's case*, 103 U. S., 714. *Tennessee v. Sneed*, 96 U. S., 69. *Murray v. Charleston*, 1b., 432. *Edwards v. Kearzy*, 1b., 595.

Laws are void which withdraw or restrict the taxing power of a city so as to impair the obligation of her contracts made upon a pledge, expressly or impliedly given, that it shall be exercised for their fulfillment. *Wolf v. New Orleans*, 103 U. S., 358. See *Brodie v. McCabe*, 33 Ark., 690. *McCracken v. Moody*, 1b., 81.

votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president] (x).

The congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States (y).

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected (z).

The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them (aa).

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

SECTION TWO. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when

(x) This paragraph is superseded by the twelfth article of amendments to the constitution.

(y) Electors of president and vice-president are to be chosen in each state on the Tuesday next after the first Monday in the month of November in the year in which they are to be appointed. *Act of January 23, 1845; 5 U. S. Stat., 721.*

The electors shall meet and give their votes on the first Wednesday in December, at such place in each state as shall be directed by the legislature thereof. *Act of March 1, 1792; 1 U. S. Stat., 239.*

(z) In case of the removal, death, resignation or inability both of the president and vice-president, the president of the senate *pro tempore*, and in case there shall be no president of the senate, then the speaker of the house of representatives, for the time being, shall act as president. *Act of March 1, 1792; 1 U. S. Stat., 239.*

(aa) The compensation of the president was fixed by act of congress of February 18, 1793, at twenty-five thousand dollars per annum, and so continued until the passage of the act of March, 1873, which fixed it at fifty thousand dollars per annum.

called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons (bb) for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint (cc) ambassadors, other public ministers and consuls, judges of the supreme court and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION THREE. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed (dd), and shall commission all the officers of the United States.

SECTION FOUR. The president, vice-president and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery or other high crimes and misdemeanors.

(bb) The power of the president to pardon is unlimited, except in cases of impeachments: it extends to every offense known to the law, and may be exercised before or after conviction, and is not subject to legislative control. A pardon reaches the punishment of the offense and the guilt of the offender, and when the pardon is full it releases the punishment and blots out the existence of the guilt; so that in the eye of the law the offender is as innocent as if he had never committed the offense. There is only this limitation to its operation: It does not restore offices forfeited, or property or interests vested in others, in consequence of the conviction. *Ex parte Garland*, 4 Wall., 334; *The United States v. Klein*, 13 Ib., 128; *Armstrong v. The United States*, Ib., 154, and see *Ex parte Wills*, 18 How., 317; *The United States v. Wilson*, 7 Pet., 150; *S. C. Bald*, C. C. R., 78-607.

(cc) After the president has nominated and the senate have confirmed an appointment, the nominee is not fully appointed or entitled to the office; for the president may change his purpose after the confirmation and withhold the commission, and without the commission there is no appointment. But when the commission is signed by the president, and the seal of the United States affixed thereto, the appointment is complete, without the delivery of the commission. *Marbury v. Madison*, 1 Cr., 137, and see *The United States v. Le Baron*, 19 How., 73; *S. C.*, 4 Wall., 642; 4 Opin., 217; 12 Opin., 304.

It was formerly held that the power of removal from office was vested in the president alone by the constitution. *Serg. Constitutional Law*, 372-3; *Marshall's Life of Washington*, 196. But by act of April 5, 1869, 16 U. S. Stat., 6, any person holding any civil office to which he may have been duly appointed "shall be entitled to hold such office during the term for which he shall have been appointed, unless sooner removed, by and with the advice and consent of the senate." This act gives the president power to suspend from office during the recess of the senate. The purpose of this act was to change the practice by which removal from office was effected at the will of the president without the concurrence of the senate. 12 Opin., 443.

(dd) The president can not be restrained by injunction from carrying into effect an act of congress alleged to be unconstitutional, nor will a bill for such purpose be allowed to be filed. *Mississippi v. Johnson*, 4 Wall., 475. Nor will a bill be entertained to enjoin the secretary of war, and other officers who represent the executive authority, from carrying into effect an act of congress. *Georgia v. Stanton*, 6 Wall., 50.

ARTICLE III.

SECTION ONE. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION TWO. The judicial power (ee) shall extend to all cases in law and equity arising under this constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction (ff); to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state (gg); between citizens of different states (hh);

(ee) There are questions arising under the constitution, laws and treaties to which the judicial power does not extend; they are denominated political questions, and their determination belongs to the political and not the judicial department of the government, and in the determination of all such questions the courts are bound by the action of the political departments. Among other questions the following are held to be of this character:

1. Whether a revolted colony is to be treated as a sovereign state *de facto*. *Rose v. Himeley*, 4 Cr., 241; *S. C. Ber.*, 300; *United States v. Palmer*, 3 Wh., 610; *Kennett v. Chambers*, 14 How., 38; *Clark v. The United States*, 3 Wash. C. C., 101. And this is true of governments attempted to be erected within the limits of the United States. *The United States v. Baker*, 5 Blatch., 6; *Penn v. Tollison*, 26 Ark., 545; *Thompson v. Mankin*, *Id.*, 586.
2. Who is the lawful sovereign, or what the lawful government of a foreign power. *King of Spain v. Oliver*, 2 Wash. C. C., 329. *The Sapphire*, 11 Wall., 164; *The Hornet*, 2 Abb. U. S., 35.
3. Whether a particular class of Indians are still to be regarded as a tribe, or have ceased to hold the tribal relation. *The United States v. Holliday*, 3 Wall., 407.
4. Whether the political body which passed a law was a state. *Scott v. Jones*, 5 How., 343.
5. Which of two rival organizations in a state is the duly constituted government of the state. *Luther v. Borden*, 7 How., 1.
6. The condition of peace and war, public or civil. *The United States v. Probasco*, 11 Am. L. R., 419. Hence, when the president has proclaimed a state to be in insurrection, the courts must hold that this condition continues until he decides the contrary. *Id.* and *Phillips v. Hatch*, 1 Dillon, 571; *The Protector*, 12 Wall., 700.
7. Whether in the case of rebellion, and the erection of a government *de facto* by the rebels, the commissions of such *de facto* government shall be recognized to excuse the acts of those who would otherwise be deemed pirates. *The United States v. Baker*, 5 Blatch., 6.
8. The question of boundary between this government and a foreign power. *Garcia v. Lee*, 12 Pet., 511.
9. A fact in regard to the sovereignty of an island or other territory. *Williams v. Suffolk Ins. Co.*, 13 Pet., 415; *S. C.*, 3 Trnn., 270.

(ff) It was formerly held that the jurisdiction of the courts of admiralty of the United States, so far as that jurisdiction depended upon locality, was limited to the high seas and waters within the ebb and flow of the tide. *Thomas Jefferson*, 10 Wh., 428. But this doctrine has been overruled, and it is now settled that the admiralty jurisdiction of these courts extends not only to the main sea, but to all the navigable waters of the country, whether landlocked or open, salt or fresh, tidal or not. *Genesee Chief v. Fitzhugh*, 12 How., 443; *The Hine v. Trevor*, 4 Wall., 555; *The Belfast*, 7 W. U., 624; *The Eagle*, 8 Wall., 15; *Insurance Co. v. Dunham*, 11 Wall., 1.

The district courts of the United States possess exclusive original jurisdiction in all cases properly cognizable in admiralty, whether depending upon the subject matter or locality, and whether of contract or tort, and state statutes, so far as they attempt to confer upon state courts power to proceed *in rem*. In such cases, are unconstitutional and void. *The Moses Taylor*, 4 Wall., 411; *The Hine v. Trevor*, *Id.*, 555; *The Belfast*, 7 Wall., 624; *The Adèle*, 1 Bowditch, 309; *The Leonard*, 3 *Id.*, 263; *Jackson v. Kinnie*, 17 A. L. R., 470.

(gg) In *Chisholm v. Georgia*, 2 Dall., 419, the supreme court decided that the State could be sued by an individual citizen of another state. This decision induced the adoption of the eleventh amendment to the constitution, declaring that the judicial power of the United States should not extend to such cases. See *Cohens v. Virginia*, 6 Wh., 406; *New Hampshire v. Louisiana*, 107 U. S.

(hh) A citizen of a territory, or of the District of Columbia, is not a citizen of a state within the meaning of this clause. *Hartshorn v. Wright, Peters' C. C.*, 64; *New Orleans v. Winter*, 1 Wh., 91; *Vasse v. Mifflin*, 4 Wash. C. C. R., 519; *Barney v. Baltimore City*, 6 Wall., 280.

The grant of the judicial power extends, without limit or qualification, to controversies "between citizens of different states;" but the judiciary act of 1789, in conferring upon the circuit courts jurisdiction under

between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION THREE. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION ONE. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof (ii).

SECTION TWO. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states (jj).

A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the execu-

this clause of the constitution, limited it "to suits between a citizen of the state in which the suit is brought and a citizen of another state," and "where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars;" and there is a further limitation in the act, that when the suit is in favor of an assignee of a promissory note, or other chose in action, there shall be no jurisdiction unless suit could have been brought in the courts of the United States had no assignment been made. These restrictions on the jurisdiction conferred by the constitution have been sustained by the supreme court, the rule being that the constitution and the act of congress must both concur in giving the jurisdiction. *Assignee of Brainard v. Williams*, 4 *McLean*, 122; *Sheldon v. Sill*, 8 *How.*, 141.

A citizen of the state where the suit is brought may sue a citizen of another state in the circuit court. *Harrison v. Rowan*, Pet. C. C., 489; *Kitchen v. Strawbridge*, 4 *W. C. C.*, 84.

A corporation created by and transacting business in a state is to be deemed an inhabitant of that state, capable of being treated as a citizen, for all purposes of suing and being sued in a circuit court, and no averment or evidence to the contrary is admissible to defeat the jurisdiction. *Marshall v. Baltimore and Ohio Railroad Co.*, 16 *How.*, 314; *Ohio and Mississippi Railroad Co. v. Wheeler*, 1 *Bl.*, 256.

(ii) See *Act of Congress*, post. *Peel v. January*, 35 *Ark.*, 337.

(jj) This was intended to secure to the citizens of every state, within every other, the privileges and immunities (whatever they might be) accorded in each to its own citizens. *Lemmon v. The People*, 20 *N. Y.*, 627. It secures and protects the right of a citizen of one state to pass into any other state of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire and hold personal and real property; to maintain actions in the courts of the state, and to be exempt from any higher taxes or excises than are imposed by the state upon its own citizens, and a statute imposing a discriminating tax on non-resident traders is void. *Ward v. Maryland*, 12 *Wall.*, 418. A corporation is not a citizen within the meaning of this clause, and a state may, by law, require insurance companies incorporated by the laws of other states, as a condition precedent to their right to do business in such state, to take out a license and make a deposit of bonds. *Paul v. Virginia*, 8 *Wall.*, 168. See *Dabbs v. State*, 39 *Ark.*, 353.

tive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime (kk).

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION THREE. New states may be admitted by the congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or of any particular state.

SECTION FOUR. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or of the executive (when the legislature can not be convened), against domestic violence (ll).

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this constitution when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article, and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

(kk) See *Act of Congress of July 12, 1793*, 1 *U. S. Stat.*, 302, and *post*. "FUGITIVES FROM JUSTICE." The duty of providing by law the regulations necessary to carry this clause into execution was manifestly devolved upon congress; for, if it was left to the states, each state might require different proof to authenticate the judicial proceedings upon which the demand was founded. *Commonwealth of Kentucky v. Dennison*, 24 *How.*, 104. The words "treason, felony or other crime," in this clause, include every offense forbidden and made punishable by the laws of the state where the offense is committed. The duty of the governor of the state from which a fugitive is claimed is merely ministerial. No discretion, with respect to the nature or character of the crime charged, is vested in him. *Ib.*, 103. Nor can he pass upon the sufficiency of the indictment; that is a judicial question, to be decided by the courts of the state making the demand. *Ib.*, 107. If a governor refuses to discharge this duty there is no power delegated to the general government, either through the judicial or any other department, to use any coercive measure to compel him. *Ib.*, 109-10.

(ll) It rests with congress to decide what government is the established one in a state; for, as the United States guarantee to each state a republican form of government, congress must necessarily decide what government is established in the state before it can determine whether it is republican or not. *Luther v. Borden*, 7 *How.*, 42. When application is made to the president he must determine what body of men constitute the legislature and who is the governor, which is the government, and which party is unlawfully arrayed against it before he can act. *Ib.*, 43-45.

ARTICLE VI.

All debts contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States under this constitution as under the confederation.

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made (mm) or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,

President and deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

Wm. Samuel Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

DELAWARE.

Geo: Read,
Gunning Bedford, Jr.,
John Dickinson,
Richard Bassett,
Jaco: Broom.

MARYLAND.

James McHenry,
Dan: of St. Thos: Jenifer,
Dan'l Carroll.

VIRGINIA.

John Blair,
James Madison, Jr.

(mm) A treaty binds a nation in the aggregate, and all its subordinate authorities and its citizens as individuals, to the observance of the stipulations contained in it. *Ware v. Hylton*, 3 Dall., 199. *Worcester v. Georgia*, 6 Pet., 575. *Fellows v. Dennison*, 23 N. Y., 427. It is paramount to any state constitution or law inconsistent with it. *Gordon v. Kerr*, 1 Wash. C. C., 322. 6 Opin., 291. And state laws denying to aliens the right to purchase, hold and transmit property may be restricted or abolished by treaty stipulation between the United States and the government of which such aliens are subjects. 8 Opin., 411. *People v. Gerke*, 5 Cal., 381.

The effect of treaties and acts of congress when in conflict is not settled by the constitution, but the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of congress, and an act of congress may supersede a prior treaty. *The Cherokee Tobacco*, 11 Wall., 621. S. C., 1 Dillon, 264. *Taylor v. Morton*, 2 Curt. C. C., 454. *Gray v. Clinton Bridge*, 1 Woolw., 150. *Webster v. Reed, Morris (Iowa)*, 467.

NEW JERSEY.

Wil: Livingston,
David Brearly,
Wm. Patterson,
Jona. Dayton.

NORTH CAROLINA.

Wm. Blount,
Rich'd Dobbs Spaight,
Hu. Williamson.

SOUTH CAROLINA.

PENNSYLVANIA.

B. Franklin,
Thomas Mifflin,
Rob't Morris,
Geo: Clymer,
Tho: Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouv: Morris.

J. Rutledge,
Charles Coatesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abr. Baldwin.

Attest:

WILLIAM JACKSON,
Secretary.

[THE conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, congress, at the session begun and held at the city of New York, on Wednesday, the 4th of March, 1789, proposed to the legislatures of the several states twelve amendments, ten of which, only, were adopted. They are the ten first following:]

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

FIRST SESSION, FIRST CONGRESS, MARCH 4TH, 1789.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof (nn); or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble and to petition the government for a redress of grievances (nn2).

(nn) "The constitution of the United States makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the state constitutions and laws; nor is there any inhibition imposed by the constitution of the United States in this respect in the states." *Permoti v. First Municipality*, 3 How., 589, 609; *Story's Const.*, § 1878.

Christianity is no part of the municipal law. *Andrew v. N. Y. & P. B. Society*, 4 Sandf., N. Y., 182.

With us all religions are tolerated, and none is established. Each has an equal right to the protection of the law, whether Christians, Jews or Infidels. *Ayers v. The Methodist Church*, 3 Sandf., 377; *Updegraff v. The Commonwealth*, 11 Sergt. & Rawl., 394; *Vidal v. Girard's Ex'rs*, 2 How., 198. See *Constitution of Arkansas*, 1874, Art. 2, Sec. 24.

A party's religious belief can not be accepted as a justification for his committing an overt act made criminal by the law of the land. *Reynolds v. United States*, 98 U. S., 145.

(nn2) The right of the people peaceably to assemble for lawful purposes, with the obligation on the part of the states to afford it protection, existed long before the adoption of the constitution. The first amendment was not intended to limit the action of the state governments in respect to their own citizens, but to operate upon the national government. It left the authority of the states unimpaired, and guaranteed the continuance of the right only against congressional interference. *United States v. Cruikshank*, 92 U. S., 542. But the right of the people peaceably to assemble for the purpose of petitioning congress for a redress of grievances, or for anything else connected with the powers or duties of the national government, is an attribute of national citizenship, and as such under the protection of and guaranteed by the United States. *Ib.*

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed (nn3).

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized (oo).

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger (pp); nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law (qq); nor shall private property be taken for public use without just compensation (rr).

(nn3) The right to bear arms is not granted by the constitution; neither is it in any manner dependent upon that instrument for its existence. The second amendment means no more than that it shall not be infringed by congress, and has no other effect than to restrict the national government. *United States v. Cruikshank*, 92 U. S., 542.

This article is a restraint upon federal and not upon state legislation. *Fife v. State*, 31 Ark., 455.

(oo) This refers only to process issued under authority of the United States. *Smith v. Maryland*, 18 How., 71. But see *XIV Art. of Amendment*.

See also note (o) *ante*.

(pp) Every one connected with these branches of the public service (in the land or naval forces, or in the militia) is amenable to the jurisdiction which congress has created for their government (rules and articles of war), and, while thus serving, surrenders his right to be tried by the civil courts. *All other persons*, citizens of states where the courts are open, if charged with crime, are guaranteed the right of trial by jury. *Ex parte Milligan*, 4 Wall., 123. If in foreign invasion or civil war the courts are actually closed, and it is impossible to administer criminal justice according to law, then on the theater of active military operations, where war really prevails, there is a necessity to furnish a substitute for civil authority thus overthrown to preserve the safety of the army and society, and, as no power is left but the military, it is allowed to govern by martial rule until the laws can have their full course. As necessity creates the rule, so it limits its duration, for if this government is continued after the courts are reinstated it is a gross usurpation of power, and martial law can not arise from *threatened* invasion. The necessity must be actual and present, the invasion real, and such as effectually closes the courts and deposes the civil administration. *Ib.*, 127.

(qq) This article is a restraint upon the legislative as well as upon the executive and judicial branches of the government, and can not be so construed as to leave congress free to make any process "due process of law." *Murray v. Hoboken L. & I. Co.*, 18 How., 296. These words generally imply and include regular allegations, opportunity to answer and a trial according to some settled course of judicial proceedings. *Ib.*, 280. But they do not apply to proceedings to collect the public revenue and sums due from defaulting fiscal agents of the government. *Ib.*, 272-7, and *Ames v. Port Huron*, 11 Mich., 139.

For the origin and history of this provision of the constitution as found in the fifth and fourteenth amendments, see *Davidson v. New Orleans*, 96 U. S., 97.

The provisions embraced in this article relate to those rights whose protection is peculiarly within the province of the judicial branch of the government. *U. S. v. Lee*, 106 U. S., 196.

(rr) It is not necessary that property should be absolutely *taken*, in the narrowest sense of that word, to

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law (ss), and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense (tt).

ARTICLE VII. (uu)

In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law (vv).

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

bring the case within the protection of this constitutional provision. There may be such serious interruption to the common and necessary use of property as will be equivalent to a taking within the meaning of the constitution. The backing of water so as to overflow the lands of an individual, or any other superinduced addition of water, earth, sand, or other material, or artificial structure, placed on land, if done under statutes authorizing it for the public benefit, is such a taking as by the constitutional provision demands compensation. *Pumpelly v. Green Bay Company*, 13 Wall., 166. This provision only applies to the exercise of the right of eminent domain by the United States. *C. & F. R. Co. v. Turner*, 31 Ark., 494.

(ss) Under this article the district in which the trial is had must have been ascertained by law *previously* to the commission of the crime, and not merely previously to the trial; and where a crime was committed in a district which was afterward divided, and the locality in which the crime was committed fell within the limits of the newly-erected district, it was held that the court in that district had no jurisdiction. *The United States v. Mazum*, 5 Blatch., 360. CONTRA: 6 Opin., 103, and see *The United States v. Dawson*, *Hempstead C. C.*, 643; *S. C.*, 15 How., 467; *Gut v. The State*, 9 Wall., 35.

(tt) When this article was adopted an accused party was not allowed the assistance of counsel in England. The defect was cured by act of parliament passed in 1836. *2 May's Const. Hist. of England*, 558.

(uu) This article, in common with the first ten amendments to the constitution, applies only to the national government, and does not restrict the powers of the states, nor control the proceedings in state courts. *Barrows v. Mayor*, 7 Pet., 247. *Withers v. Buckley*, 20 How., 84. *Twitcheil v. Commonwealth*, 7 Wall., 321. *The United States v. Rhodes*, 1 Abb., U. S. R., 42. *Murphy v. People*, 2 Cowen, 818. *Pearson v. Yewdall*, 95 U. S., 294.

(vv) Sec. 5 of the act of congress of 3d March, 1863, 13 U. S. Stat., 756, so far as it authorizes the removal of causes which have been once tried by a jury in the state court and a retrial in the circuit court of the United States upon the facts and law, is in conflict with this article and void. *Justices v. Murray*, 9 Wall., 274.

ARTICLE XI.

THIRD CONGRESS, SECOND SESSION, DECEMBER 2D, 1793.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state (ww).

ARTICLE XII.

EIGHTH CONGRESS, FIRST SESSION, OCTOBER 17TH, 1803.

The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March, next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE XIII. (xx)

SECTION ONE. Neither slavery nor involuntary servitude, except as a pun-

(ww) See note (gg) *ante*. A cause can not be maintained in the supreme court of the United States against a state of the Union, though brought in the name of a state, if the absolute right to the subject in controversy is not in the state itself. One state can not create a controversy with another state by assuming the prosecution of debts owing by the other state to its citizens. *New Hampshire v. Louisiana, New York v. Louisiana*, 108 U. S., 76.

(xx) This article was submitted to the several states for their action, by resolution of congress, February 1st, 1865, was ratified by the requisite number of states, and went into effect on the 18th day of December, 1865. *Proclamation of Secretary of State*, 13 U. S. Stat., 774.

ishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction (yy).

SECTION TWO. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV. (zz)

SECTION ONE. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws (zz2).

SECTION TWO. The representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state or the members of the legislature thereof is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

(yy) While this article was primarily intended to abolish African slavery, it equally forbids Mexican peonage or the Chinese coolie trade, when they amount to slavery or involuntary servitude; and the use of the word "servitude" is intended to prohibit all forms of involuntary slavery of whatever class or name. *Butchers' Benevolent Association of N. O. v. Crescent City Live Stock Landing and Slaughter-house Co.*, 16 Wall.

(zz) This article was submitted to the several states for their action by resolution of congress June 16th, 1866, 14 U. S. Stat., 358, and was ratified by the requisite number of states, and "declared to be a part of the constitution of the United States" by joint resolution of congress July 21st, 1868, and was promulgated as such by the secretary of state 28th July, 1868. 15 U. S. Stat., 708.

NOTE.—The states of Ohio and New Jersey ratified this amendment, and afterward—and before it had been ratified by a sufficient number of states to make it part of the constitution—those states withdrew their consent to said amendment. Congress maintained that a state could not withdraw its ratification after it had once been given. See joint resolutions of congress, 15 U. S. Stat., 709, and proclamation of secretary of state. *Ib.*, 706.

(zz2) The fourteenth amendment was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general government in that enjoyment whenever it should be denied by the states. It not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any state the power to withhold from them the equal protection of the laws, and authorized congress to enforce its provisions by appropriate legislation. *Strader v. West Virginia*, 100 U. S., 303.

Where a state statute secures to every white man the right of trial by jury, selected from and without discrimination against his race, and at the same time permits or requires such discrimination against the colored man because of his race, the latter is not equally protected by law with the former. *Ib.*

The prohibitions of this amendment have exclusive reference to state action. It is the state which is prohibited from denying to any person within its jurisdiction the equal protection of the laws, and, consequently, the statutes founded upon the amendment, and partially enumerating what civil rights the colored man shall enjoy equally with the white, are intended for protection against state infringement of those rights. *Virginia v. Rives*, 100 U. S., 313.

A state may exert her authority through different agencies, and the prohibitions of this amendment extend to her action denying equal protection of the laws, whether it be action by one of these agencies or by another. Congress, by virtue of the fifth section, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive or the judicial department of the state. The mode of enforcement is left to its discretion. *Ib.* See also *Slaughter-house cases*, 16 Wall., 36; *United States v. Cruikshank*, 92 U. S., 542; *Davidson v. New Orleans*, 96 U. S., 97; *Ex parte Virginia* 100 U. S., 339; *Pace v. Alabama*, 106 U. S., 583; *Minor v. Happersett*, 21 Wall., 162.

SECTION THREE. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

SECTION FOUR. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION FIVE. The congress shall have power to enforce by appropriate legislation the provisions of this article.

ARTICLE XV. (aaa)

SECTION ONE. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude (bbb).

SECTION TWO. The congress shall have power to enforce this article by appropriate legislation.

(aaa) This article was submitted to the several states for ratification by congress February 27, 1869, and was ratified by the requisite number of states, and promulgated as a part of the constitution 30th March, 1870. 16 U. S. Stat., 1131.

(bbb) The fifteenth amendment to the constitution does not confer the right of suffrage; but it invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise on account of their race, color or previous condition of servitude, and empowers congress to enforce that right by "appropriate legislation." *United States v. Reese*, 92 U. S., 214.

The power of congress to legislate at all upon the subject of voting at state elections rests upon this amendment, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections is because of his race, color or previous condition of servitude. *Ib.*, and see *United States v. Cruikshank*, 92 U. S., 542.

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OF

1874.

SYLLABUS.

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CONSTITUTION

OF THE

STATE OF ARKANSAS.

ADOPTED IN CONVENTION SEPTEMBER 7, 1874.*

PREAMBLE.

We, the people of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of government, for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and posterity, do ordain and establish this constitution.

Preamble.

ARTICLE I.

BOUNDARIES.

We do declare and establish, ratify and confirm, the following as the permanent boundaries of the State of Arkansas, that is to say: Beginning at the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees of north latitude, running thence west with said parallel of latitude to the middle of the main channel of the St. Francis River; thence up the main channel of said last-named river to the parallel of thirty-six degrees thirty minutes of north latitude; thence west with the southern boundary line of the State of Missouri to the southwest corner of said last-named state; thence to be bounded on the west to the north bank of Red River, as by act of congress and treaties existing January 1, 1837, defining the western limits of the Territory of Arkansas, and to be bounded across and south of Red River by the boundary line of the State of Texas

Boundaries of the state.

* This constitution was ratified by the people October 13, 1874, and its adoption was proclaimed October 30, 1874. See *Proclamation by State Board of Election Supervisors, post.*; *Schedule to Constitution, Sec. 17*; *Vance v. Little Rock*, 30—444.

as far as to the north-west corner of the State of Louisiana; thence easterly with the northern boundary line of said last-named state to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said last-named river, including an island in said river known as "Belle Point Island," and all other land originally surveyed and included as a part of the Territory or State of Arkansas, to the thirty-sixth degree of north latitude, the place of beginning.

SEAT OF GOVERNMENT.

Seat of government.

The seat of government of the State of Arkansas shall be and remain at Little Rock, where it is now established.

ARTICLE II.

DECLARATION OF RIGHTS.

Source of political power.
Object of government.
Right of reform and abolition.

SECTION 1. All political power is inherent in the people, and government is instituted for their protection, security and benefit; and they have the right to alter, reform or abolish the same in such manner as they may think proper.

Natural freedom and independence of men.
Inalienable rights.

SEC. 2. All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Origin of government.

Equality of all persons before the law.

SEC. 3. The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color or previous condition.

Right of public assembly;
And of petition.

SEC. 4. The right of the people peaceably to assemble to consult for the common good, and to petition, by address or remonstrance, the government, or any department thereof, shall never be abridged (a).

Right to bear arms.

SEC. 5. The citizens of this state shall have the right to keep and bear arms for their common defense (b).

(a) See note (nn2) to art. I Amendments Constitution U. S.

(b) This relates to such arms as are used for purposes of war, and does not prevent the legislature from prohibiting the wearing of such weapons as are not used in civilized warfare, and would not contribute to the common defense. *Fife v. The State*, 31—455.

The legislature may, to some extent, regulate the mode and occasion of wearing war arms, but to prohibit the citizen from wearing or carrying a war arm except upon his own premises or when on a journey, or when acting as or in aid of an officer, is an unwarranted restriction upon his constitutional right to keep and bear arms. *Wilson v. The State*, 33—557; *Holland v. State*, *Id.*, 560. But, unless army or navy pistols be carried under such circumstances as are embraced in the exceptions noted above, it is not unconstitutional to prohibit carrying them, except uncovered and in the hand. *Haile v. State*, 38—564. And no constitutional right is abridged by making it a misdemeanor to sell pistols, except such as are used in the army or navy of the United States. *Dabbs v. The State*, 39—353.

SEC. 6. The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions is one of the invaluable rights of man; and all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and, if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party charged shall be acquitted.

Liberty of the press and of speech.

Libel.

SEC. 7. The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy (c); but a jury trial may be waived by the parties in all cases in the manner prescribed by law.

Trial by jury.

SEC. 8. No person shall be held to answer a criminal charge unless on the presentment or indictment of a grand jury, except in cases of impeachment or cases such as the general assembly shall make cognizable by justices of the peace, and courts of similar jurisdiction; or cases arising in the army and navy of the United States; or in the militia when in actual service in time of war or public danger; and no person, for the same offense, shall be twice put in jeopardy of life or liberty (d); but if, in any criminal prosecution, the jury be divided in opinion, the court before which the trial shall be had may, in its discretion, discharge the jury, and commit or bail the accused for trial at the same or the next term of said court; nor shall any person be compelled, in any criminal case, to be a witness against himself (e); nor be deprived of life, liberty or property, without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

No person to be held to answer for crime but on presentment or indictment. Exceptions.

No person to be twice put in jeopardy for same offense;

Or be compelled to be witness against himself. Security for life, liberty and property. Right to bail.

(c) This applies only to common law and other analogous cases. The legislature can dispense with a jury trial in the case of a contested election. *Govan v. Jackson*, 32—553.

A similar provision in the constitution of 1836 related to the trial of issues of fact in civil and criminal causes, and not to a statutory proceeding for the assessment of damages for the appropriation of a right of way. The word "jury" as used in that constitution means twelve men, and the legislature can not abridge the number. *Cairo and Fulton Railroad Co. v. Trout*, *Id.*, 17.

(d) Where a defendant is tried on an indictment for murder in the first degree, convicted of murder in the second degree and a new trial is granted him, he can not be again put in jeopardy for the higher grade of homicide. *Johnson v. State*, 29—31. See also *State v. Clark*, 32—231; *Stewart v. State*, 13—720.

Where a defendant indicted for a misdemeanor punishable by fine only has been tried and acquitted, and on appeal or writ of error to the supreme court the judgment is reversed and the cause remanded, he may be tried again without any violation of this provision. *Jones v. State*, 15—261. And so where the verdict of acquittal in such cases is set aside by the circuit court. *Taylor v. State*, 36—84. See also *Steck v. State*, 28—113.

(e) Where two persons are concerned in the commission of a crime (as in gaming) one of them may be compelled to give evidence on the trial of an indictment against the other, because by the provision of the statute "the testimony given by such witness shall in no instance be used against him in any criminal prosecution for the same offense," and thus he is protected from self-accusation and his common law and constitutional privilege secured to him. (*State v. Quarles*, 13—307. *Cossart v. State*, 14—539. *Pleasant v. State*, 15—649.) *Rose's Digest*, 830. (See title "Evidence," sec. 2856.) But a witness is privileged from answering questions that would disclose his connection with another and distinct offense from the one on the trial of which he is called to testify. *Id.*

Excessive bail and fines, cruel punishments and detention of witnesses prohibited. Rights of accused in criminal prosecutions.

SEC. 9. Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishment be inflicted; nor witnesses be unreasonably detained.

SEC. 10. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial (f) by an impartial jury of the county in which the crime shall have been committed (g); provided that the venue may be changed to any other county of the judicial district in which the indictment is found, upon the application of the accused, in such manner as now is, or may be, prescribed by law (h); and to be informed of the nature and cause of the accusation against him, and to have a copy thereof (i); and to be confronted with the witnesses against him (j); to have compulsory process for obtaining witnesses in his favor, and to be heard by himself and his counsel.

Habeas corpus.

SEC. 11. The privilege of the writ of habeas corpus shall not be suspended, except by the general assembly, in case of rebellion, insurrection or invasion, when the public safety may require it.

Suspension of the laws.

SEC. 12. No power of suspending or setting aside the law or laws of the state shall ever be exercised except by the general assembly.

Redress of wrongs.

SEC. 13. Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase, completely and without denial, promptly and without delay, conformably to the laws.

Treason.

SEC. 14. Treason against the state shall only consist in levying and making war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Security against unreasonable searches and seizures.

SEC. 15. The right of the people of this state to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated (k); and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

Imprisonment for debt prohibited.

SEC. 16. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud (l).

(f) See *Stewart v. State*, 13—720.

(g) The legislature can not invest a court with jurisdiction of crimes committed beyond the limits of the county. *Dougan v. State*, 30—41. *Walls v. State*, 32—365. As to cases in which a crime may be committed on the boundary line between two counties, see *State v. Rhoda*, 23—156.

(h) The venue in a criminal case can not be changed to a county outside of the judicial circuit in which the indictment is found for any cause. *State v. Flynn*, 31—35.

(i) As to copy of indictment in cases not capital, see *Howard v. State*, 37—265.

(j) The testimony of a deceased witness on a former trial may be proved on a second trial for the same offense. *Pope v. State*, 22—372. And evidence of the testimony of a witness before an examining court, where the defendant had the opportunity of cross-examination, is admissible on the trial of the same offense before the circuit court when the witness has forfeited his recognizance and can not be found. *Shackelford v. State*, 33—539. *Hurley v. State*, 29—17.

(k) See *State v. Leathers*, 31—44.

(l) See *Ruddell v. Childress*, 31—511.

SEC. 17. No bill of attainder, *ex post facto* law (m) or law impairing the obligation of contracts shall ever be passed (n); and no conviction shall work corruption of blood or forfeiture of estate.

Attainder, laws *ex post facto*, impairing contracts, etc., prohibited.

SEC. 18. The general assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

Equality of privileges and immunities.

SEC. 19. Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emoluments, privileges or honors ever be granted or conferred in this state.

Perpetuities, monopolies and hereditary distinctions prohibited.

SEC. 20. No distinction shall ever be made by law between resident aliens and citizens in regard to the possession, enjoyment or descent of property.

Resident aliens.

SEC. 21. No person shall be taken or imprisoned, or dis seized of his estate, freehold, liberties or privileges; or outlawed, or in any manner destroyed or deprived of his life, liberty or property; except by the judgment of his peers or the law of the land (o); nor shall any person, under any circumstances, be exiled from the state.

Life, liberty and property, how secured.

SEC. 22. The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor (p).

Banishment prohibited.

Private property taken for public use.

SEC. 23. The state's ancient right of eminent domain and of taxation is herein fully and expressly conceded; and the general assembly may delegate the taxing power, with the necessary restriction, to the state's subordinate political and municipal corporations to the extent of providing for their existence, maintenance and well being, but no further.

State's right of eminent domain and of taxation.

Delegation of taxing power.

SEC. 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect or support any place of worship; or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship above any other.

Right of religious liberty.

SEC. 25. Religion, morality and knowledge being essential to good government, the general assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Protection of religious liberty.

(m) See note (s) to sec. 9, art. I, Const. U. S. An *ex post facto* law declares an offense to be punishable in a manner that it was not punishable at the time it was committed, and relates exclusively to criminal proceedings. *Taylor v. The Governor*, 1—21.

(n) See note (w) to sec. 10, art. I, Const. U. S.

(o) See *Dabbs v. State*, 39—353.

(p) See *Martin ex parte*, 13—199; *Roberts v. Williams*, 15—43; *Cairo and Fulton Railroad Co. v. Turner*, 31—494.

Religious tests prohibited.

SEC. 26. No religious test shall ever be required of any person as a qualification to vote or hold office, nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

Oaths or affirmations not to be dispensed with.

Involuntary servitude, except for crime, prohibited.

Standing army. Military subordinate to civil power. Quartering of troops.

SEC. 27. There shall be no slavery in this state, nor involuntary servitude, except as a punishment for crime. No standing army shall be kept in time of peace; the military shall at all times be in strict subordination to the civil power; and no soldier shall be quartered in any house, or on any premises, without the consent of the owner in time of peace; nor in time of war, except in a manner prescribed by law.

Tenure of lands.

SEC. 28. All lands in this state are declared to be allodial; and feudal tenures of every description, with all their incidents, are prohibited.

This enumeration of rights not to disparage other rights. Paramount authority of declaration of rights and of constitution.

SEC. 29. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III.

FRANCHISE AND ELECTIONS.

Qualifications of electors.

SECTION 1. Every male citizen of the United States, or male person who has declared his intention of becoming a citizen of the same, of the age of twenty-one years, who has resided in the state twelve months, and in the county six months, and in the voting precinct or ward one month, next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people.

Freedom of elections.

SEC. 2. Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name; or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof.

Right of suffrage not to depend on previous registration.

Or impairable, except on conviction for felony.

Elections to be by ballot. Numbering of ballots.

SEC. 3. All elections by the people shall be by ballot. Every ballot shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters opposite the name of the elector who presents the ballot. The election officer shall be sworn or affirmed not to disclose how any elector shall have voted, unless required to do so as witnesses in a judicial proceeding, or a proceeding to contest an election.

Secrecy of the ballot.

SEC. 4. Electors shall, in all cases (except treason, felony and breach of the peace), be privileged from arrest during their attendance at elections and going to and from the same. Privilege of electors.

SEC. 5. No idiot or insane person shall be entitled to the privileges of an elector. Idiots and insane.

SEC. 6. Any person who shall be convicted of fraud, bribery or other willful and corrupt violation of any election law of this state shall be adjudged guilty of a felony, and disqualified from holding any office of trust or profit in this state. Corrupt violation of election laws to disqualify for office.

SEC. 7. No soldier, sailor or marine in the military or naval service of the United States shall acquire a residence by reason of being stationed on duty in this state. U. S. soldiers sailors and marines.

SEC. 8. The general elections shall be held biennially, on the first Monday of September; but the general assembly may by law fix a different time. Time of holding general elections.

SEC. 9. In trials of contested elections and in proceedings for the investigation of elections no person shall be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony. Testimony in cases of contested elections.

SEC. 10. No person shall be qualified to serve as an election officer who shall hold at the time of the election any office, appointment or employment in or under the government of the United States, or of this state, or in any city or county, or any municipal board, commission or trust in any city, save only the justices of the peace and aldermen, notaries public and persons in the militia service of the state. Nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve—save only to such subordinate municipal or local offices, below the grade of city or county officers, as shall be designated by general law. Causes of disqualification as election officer.

SEC. 11. If the officers of any election shall unlawfully refuse or fail to receive, count or return the vote or ballot of any qualified elector, such vote or ballot shall nevertheless be counted upon the trial of any contest arising out of said election (q). Votes unlawfully refused to be counted on trial of contest.

SEC. 12. All elections by persons acting in a representative capacity shall be *viva voce*. Elections by parties representative.

ARTICLE IV.*

DEPARTMENTS.

SECTION 1. The powers of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit: Those Departments government.

(q) This provision requires all legal votes cast at an election, no matter whether returned or not, or whether any irregularities attended the election, to be counted upon contest. *Goran v. Jackson*, 32—553.

(*) This is a literal copy of article III of the constitution of 1836.

which are legislative to one, those which are executive to another, and those which are judicial to another.

Separation of departments.

SEC. 2. No person or collection of persons, being of one of these departments, shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted (r).

ARTICLE V.

LEGISLATIVE.

General assembly.

SECTION 1. The legislative power of this state shall be vested in a general assembly, which shall consist of the senate and house of representatives (s).

House of representatives.

SEC. 2. The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

Senate.

SEC. 3. The senate shall consist of members to be chosen every four years by the qualified electors of the several districts. At the first session of the senate the senators shall divide themselves into two classes by lot, and the first class shall hold their places for two years only, after which all shall be elected for four years.

Qualifications of senators and representatives.

SEC. 4. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, nor any one who has not been for two years next preceding his election a resident of this state, and for one year next preceding his election a resident of the county or district whence he may be chosen. Senators shall be at least twenty-five years of age and representatives at least twenty-one years of age.

Times of meeting.

SEC. 5. The general assembly shall meet at the seat of government every two years on the first Tuesday after the second Monday in November until said time be altered by law.

Vacancies.

SEC. 6. The governor shall issue writs of election to fill such vacancies as shall occur in either house of the general assembly.

Officers ineligible to general assembly.

SEC. 7. No judge of the supreme, circuit or inferior courts of law or equity, secretary of state, attorney-general for the state, auditor or treasurer, recorder, clerk of any court of record, sheriff, coroner, member of congress, nor any other person holding any lucrative office under the United States or this state (militia officers, justices of the peace, postmasters, officers of public

(r) The office of state treasurer, as well as those of secretary of state, auditor, sheriff, coroner, constable and militia officers, are executive; the office of justice of the peace is judicial, and no person can at the same time hold the offices of treasurer and justice of the peace. A person holding one office has a right, if elected to another which he can not hold at the same time, to accept it, but in so doing he vacates, *eo instanti*, the first office. *State v. Hull*, 2—282.

Nor, for the same reason, can a person hold the offices of justice of the peace and deputy sheriff at the same time. The acceptance of the latter vacates the former. *State Bank v. Curran*, 10—142. See sec. 7, art. V, and secs. 6 and 26, art. XIX, *post.*, *Oliver v. Martin*, 36—137.

(s) See *Trammell v. Bradley*, 37—374. The legislature can not delegate the power to make laws, but it can make a law to delegate the power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. *Boyd v. Bryant*, 35—69.

schools and notaries excepted), shall be eligible to a seat in either house of the general assembly.

SEC. 8. No person who now is or shall be hereafter a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the general assembly, nor to any office of trust or profit, until he shall have accounted for and paid over all sums for which he may have been liable.

Holders of public moneys disqualified for office until settlement.

SEC. 9. No person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime shall be eligible to the general assembly or capable of holding any office of trust or profit in this state.

Conviction of infamous crime to disqualify for office.

SEC. 10. No senator or representative shall, during the term for which he shall have been elected, be appointed or elected to any civil office under this state.

Senator or representative disqualified for civil office.

SEC. 11. Each house shall appoint its own officers, and shall be sole judge of the qualifications, returns and elections of its own members. A majority of all the members elected to each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house shall provide.

Each house to appoint its officers and determine qualifications, etc., of its members. Quorum.

SEC. 12. Each house shall have the power to determine the rules of its proceedings; and punish its members or other persons, for contempt or disorderly behavior in its presence; enforce obedience to its process; to protect its members against violence or offers of bribes or private solicitations; and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause. A member expelled for corruption shall not thereafter be eligible to either house; and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense. Each house shall keep a journal of its proceedings (t); and from time to time publish the same, except such parts as require secrecy; and the yeas and nays on any question shall, at the desire of any five members, be entered on the journals.

Rules.

Punishment for contempts. Enforcement of process. Protection of members.

Expulsion of members.

Journal.

Yeas and nays.

SEC. 13. The sessions of each house and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.

Proceedings to be public.

SEC. 14. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the general assembly, the vote shall be taken *viva voce* and entered on the journals.

Elections by joint or concurrent vote.

SEC. 15. The members of the general assembly shall, in all cases except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the

Privileges of senators and representatives.

(t) The journals of the general assembly will be consulted by the supreme court in cases of doubt as to the passage of a law. *Burr v. Ross*, 19—250. See also *State v. L. R., M. & T. Ry Co.*, 31—701; *Smither v. Garth*, 33—17; *Worthen v. Badgett*, 32—496.

- same; and for any speech or debate in either house they shall not be questioned in any other place.
- Pay and mileage.** SEC. 16. The members of the general assembly shall receive such *per diem* pay and mileage for their services as shall be fixed by law. No member of either house shall, during the term for which he has been elected, receive any increase of pay for his services under any law passed during such term. The term of all members of the general assembly shall begin on the day of their election.
- Term to begin with election.**
- Duration of sessions.** SEC. 17. The regular biennial sessions shall not exceed sixty days in duration, unless by a vote of two-thirds of the members elected to each house of said general assembly (u). Provided, that this section shall not apply to the first session of the general assembly under this constitution, or when impeachments are pending.
- Presiding officers** SEC. 18. Each house, at the beginning of every regular session of the general assembly, and whenever a vacancy may occur, shall elect from its members a presiding officer, to be styled, respectively, the president of the senate and the speaker of the house of representatives; and whenever, at the close of any session, it may appear that the term of the member elected president of the senate will expire before the next regular session, the senate shall elect another president from those members whose terms of office continue over, who shall qualify and remain president of the senate until his successor may be elected and qualified; and who, in the case of a vacancy in the office of governor, shall perform the duties and exercise the powers of governor, as elsewhere herein provided.
- President of senate to succeed to governorship in case of vacancy.**
- Style of laws.** SEC. 19. The style of the laws of the State of Arkansas shall be: "Be it enacted by the general assembly of the State of Arkansas."
- State not to be sued in her courts.** SEC. 20. The State of Arkansas shall never be made defendant in any of her courts.
- Laws to be by bill. Amendment of bills.** SEC. 21. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (v).
- Passage of bills.** SEC. 22. Every bill shall be read at length on three different days in each house, unless the rules be suspended by two-thirds of the house, when the same may be read a second or third time on the same day; and no bill shall become a law unless on its final passage the vote be taken by yeas and nays (w), the names of the persons voting for and against the same be entered on the

(u) A concurrent resolution which has for its sole object the continuance of a session under this provision does not require the approval of the governor. *Trammell v. Bradley*, 37—374.

(v) An amendment which limits or extends the scope of a bill, but embraces no new matter not germane to its original purpose, is not prohibited by this section. *Loftin v. Watson*, 32—414.

(w) The constitution of 1868 contained a provision similar to that found in this clause; and it was held that a bill did not become a law where the house journal showed the number of votes given on its final passage, in the affirmative and in the negative, and the names

journal, and a majority of each house be recorded thereon as voting in its favor.

SEC. 23. No law shall be revived, amended or the provisions thereof extended or conferred by reference to its title only; but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length (x).

Revival, amendment and extension of laws.

SEC. 24. The general assembly shall not pass any local or special law changing the venue in criminal cases; changing the names of persons or adopting or legitimating children; granting divorces; vacating roads, streets or alleys.

Classes of special legislation prohibited.

SEC. 25. In all cases where a general law can be made applicable no special law shall be enacted; nor shall the operation of any general law be suspended by the legislature for the benefit of any particular individual, corporation or association (y); nor where the courts have jurisdiction to grant the powers or the privileges or the relief asked for.

Restriction on special legislation.

SEC. 26. No local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be affected may be situated, which notice shall be, at least, thirty days prior to the introduction into the general assembly of such bill, and in the manner to be provided by law. The evidence of such notice having been published shall be exhibited in the general assembly before such act shall be passed.

Publication of notice of local and special bills.

SEC. 27. No extra compensation shall be made to any officer, agent, employe or contractor after the service shall have been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which shall not have been provided for by pre-existing laws; unless such compensation or claim be allowed by bill passed by two-thirds of the members elected to each branch of the general assembly.

Extra compensation to officers, agents, employes and contractors. Appropriations for claims in matters not provided for by pre-existing laws.

SEC. 28. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment.

SEC. 29. No money shall be drawn from the treasury except in pursuance of specific appropriation made by law, the purpose of which shall be distinctly stated in the bill, and the maximum amount which may be drawn shall be specified in dollars and cents; and no appropriations shall be for a longer period than two years.

Appropriations to be specific, and limited to two years.

SEC. 30. The general appropriation bill shall embrace nothing but appropriations for the ordinary expense of the executive, legislative and judicial departments of the state; all other appropriations shall be made by separate bills, each embracing but one subject.

General and special appropriation bills.

of those voting in the affirmative, but there was no entry of the names of those who voted in the negative. *Smith v. Garth*, 33—17. On the first clause of section 22, and as to sections 26 and 27, see *State v. Crawford*, 35—237.

(x) See *Fletcher v. Oliver*, 25—289; *Palmore v. State*, 29—252; *Perkins v. Duval*, 31—236.

(y) See *Little Rock v. Parish*, 36—166; *Boyd v. Bryant*, 35—69.

Requisites to allowances of state tax and appropriations of money.

SEC. 31. No state tax shall be allowed, or appropriation of money made, except to raise means for the payment of the just debts of the state, for defraying the necessary expenses of government, to sustain common schools, to repel invasion and suppress insurrection, except by a majority of two-thirds of both houses of the general assembly.

Redress for injuries to person or property.

SEC. 32. No act of the general assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property (z); and in case of death from such injuries the right of action shall survive and the general assembly shall prescribe for whose benefit such action shall be prosecuted.

Liabilities of corporations to the state.

SEC. 33. No obligation or liability of any railroad or other corporation held or owned by this state shall ever be exchanged, transferred, remitted, postponed or in any way diminished by the general assembly; nor shall such liability or obligation be released except by payment thereof into the state treasury.

Bills not to be introduced during last three days of session.
Bribery of officers.

SEC. 34. No new bill shall be introduced into either house during the last three days of the session.

SEC. 35. Any person who shall, directly or indirectly, offer, give or promise any money or thing of value, testimonial, privilege or personal advantage to any executive or judicial officer or member of the general assembly, and any such executive or judicial officer or member of the general assembly who shall receive or consent to receive any such consideration, either directly or indirectly, to influence his action in the performance or non-performance of his public or official duty, shall be guilty of a felony and be punished accordingly.

Expulsion of member no bar to indictment.

SEC. 36. Proceedings to expel a member for a criminal offense, whether successful or not, shall not bar an indictment and punishment, under the criminal laws, for the same offense.

ARTICLE VI.

EXECUTIVE DEPARTMENT.

Executive officers.

Offices to be at seat of government.

Terms of office.

Commissioner of state lands.

Governor.

SECTION 1. The executive department of this state shall consist of a governor, secretary of state, treasurer of state, auditor of state and attorney-general (aa), all of whom shall keep their offices in person at the seat of government and hold their offices for the term of two years and until their successors are elected and qualified, and the general assembly may provide by law for the establishment of the office of commissioner of state lands.

SEC. 2. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "the Governor of the State of Arkansas."

(z) The legislature can not limit the recovery of damages for the injuries mentioned in this section, but a jury is not without restraint, and if its assessment be so enormous as to shock the sense of justice and to indicate that the verdict is the result of prejudice or passion, the circuit court should set it aside. *L. R. & F. S. Railway Co. v. Barker*, 39—492.

(aa) Also subordinates in their several departments. *Oliver v. Martin*, 36—137.

SEC. 3. The governor, secretary of state, treasurer of state, auditor of state and attorney-general shall be elected by the qualified electors of the state at large at the time and places of voting for members of the general assembly; the returns of each election therefor shall be sealed up separately and transmitted to the seat of government by the returning officers, and directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish the votes cast and given for each of the respective officers hereinbefore mentioned, in the presence of both houses of the general assembly. The person having the highest number of votes for each of the respective offices shall be declared duly elected thereto; but if two or more shall be equal, and highest in votes for the same office, one of them shall be chosen by the joint vote of both houses of the general assembly, and a majority of all the members elected shall be necessary to a choice.

Election of executive officers.

Returns.

Declaration of election.

Case of tie.

SEC. 4. Contested elections for governor, secretary of state, treasurer of state, auditor of state and attorney-general shall be determined by the members of both houses of the general assembly in joint session, who shall have exclusive jurisdiction in trying and determining the same, except as hereinafter provided in the case of special elections; and all such contests shall be tried and determined at the first session of the general assembly after the election in which the same shall have arisen (bb).

Contested elections for executive officers.

SEC. 5. No person shall be eligible to the office of governor except a citizen of the United States who shall have attained the age of thirty years, and shall have been seven years a resident of this state.

Qualifications of governor.

SEC. 6. The governor shall be commander-in-chief of the military and naval forces of this state, except when they shall be called into the actual service of the United States.

Governor to be commander-in-chief.

SEC. 7. He may require information in writing from the officers of the executive department on any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed.

May require information from officers of executive department. Execution of the laws.

SEC. 8. He shall give to the general assembly from time to time, and at the close of his official term to the next general assembly, information by message concerning the condition and government of the state, and recommend for their consideration such measures as he may deem expedient.

Messages to general assembly.

SEC. 9. A seal of the state shall be kept by the governor, used by him officially, and called the "Great Seal of the State of Arkansas."

Great seal of the state.

SEC. 10. All grants and commissions shall be issued in the name and by the authority of the State of Arkansas, sealed with the great seal of the state, signed by the governor and attested by the secretary of state (cc).

Grants and commissions.

(bb) See *Baxter v. Brooks*, 29—173.(cc) See *Hawkins v. The Governor*, 1—570.

Persons ineligible to office of governor.

SEC. 11. No member of congress, or other person holding office under the authority of this state, or of the United States, shall exercise the office of governor, except as herein provided.

Death, conviction on impeachment or other disability of governor.

SEC. 12. In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state or other disability of the governor, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, or a governor elected and qualified, shall devolve upon and accrue to the president of the senate.

Impeachment or other disability of president of senate, acting as governor.

SEC. 13. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government.

Election to fill vacancy in office of governor.

SEC. 14. Whenever the office of governor shall have become vacant by death, resignation, removal from office or otherwise, provided such vacancy shall not happen within twelve months next before the expiration of the term of office for which the late governor shall have been elected, the president of the senate or speaker of the house of representatives, as the case may be, exercising the powers of governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving by proclamation sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general elections of governor as far as applicable; the returns shall be made to the secretary of state, and the acting governor, secretary of state and attorney-general shall constitute a board of canvassers, a majority of whom shall compare said returns and declare who is elected; and, if there be a contested election, it shall be decided as may be provided by law.

Returns.

Contested election.

Bills to be presented to governor for approval.

Proceedings in case of veto.

SEC. 15. Every bill which shall have passed both houses of the general assembly shall be presented to the governor; if he approve it, he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which, likewise, it shall be reconsidered; and, if approved by a majority of the whole number elected to that house, it shall be a law; but in such cases the votes of both houses shall be determined by "yeas and nays," and the names of the members voting for or against the bill shall be entered on the journals. If any bill shall not be returned by the governor within five days, Sunday excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall become a law, unless he shall file the same, with his objections, in the office of the secre-

Bill not returned within five days to become a law.

Bills passed during last five days of session.

tary of state and give notice thereof by public proclamation within twenty days after such adjournment.

SEC. 16. Every order or resolution in which the concurrence of both houses of the general assembly may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of a bill (dd).

Concurrent orders and resolutions to be presented to governor for approval.
Proceedings in case of veto.

SEC. 17. The governor shall have power to disapprove any item or items of any bill making appropriation of money, embracing distinct items; and the part or parts of the bill approved shall be the law, and the item or items of appropriations disapproved shall be void unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Veto of items of appropriation bills.

Proceedings in such case.

SEC. 18. In all criminal and penal cases, except in those of treason and impeachment, the governor shall have power to grant reprieves, commutations of sentence and pardons after conviction; and to remit fines and forfeitures under such rules and regulations as shall be prescribed by law (ee). In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the adjournment of the next regular session of the general assembly. He shall communicate to the general assembly at every regular session each case of reprieve, commutation or pardon, with his reasons therefor, stating the name and crime of the convict, the sentence, its date and the date of the commutation, pardon or reprieve.

General pardoning power.

Pardoning power in cases of treason.

Information concerning pardons, etc., to be communicated to general assembly.

SEC. 19. The governor may, by proclamation, on extraordinary occasions convene the general assembly at the seat of government, or at a different place, if that shall have become since their last adjournment dangerous from an enemy or contagious disease; and he shall specify in his proclamation the purpose for which they are convened, and no other business than that set forth therein shall be transacted until the same shall have been disposed of, after which they may, by a vote of two-thirds of all the members elected to both houses, entered upon their journals, remain in session not exceeding fifteen days.

Extra sessions of general assembly and convocation elsewhere than at seat of government.

SEC. 20. In cases of disagreement between the two houses of the general assembly, at a regular or special session, with respect to the time of adjournment, the governor may, if the facts be certified to him by the presiding officers of the two houses, adjourn them to a time not beyond the day of their next meeting; and, on account of danger from an enemy or disease, to such other place of safety as he may think proper.

Case of disagreement in general assembly as to time of adjournment.

SEC. 21. The secretary of state shall keep a full and accurate

Duties of secretary of state.

(dd) See note (u) section 17, art. V.

(ee) See *Baldwin v. Scoggin*, 15—427; *Hunt ex parte*, 10—284; *Edwards v. State*, 12—122; *State v. Carson*, 27—469.

Superintendent of public instruction.	record of all the official acts and proceedings of the governor, and, when required, lay the same, with all papers, minutes and vouchers relating thereto, before either branch of the general assembly. He shall also discharge the duties of superintendent of public instruction, until otherwise provided by law.
Duties of other officers of executive department.	SEC. 22. The treasurer of state, secretary of state, auditor of state and attorney-general shall perform such duties as may be prescribed by law; they shall not hold any other office or commission, civil or military, in this state or under any state, or the United States, or any other power, at one and the same time; and,
Their disqualification to hold other office.	in case of vacancy occurring in any of said offices, by death, resignation or otherwise, the governor shall fill said office by appointment for the unexpired term.
Vacancies in their offices.	SEC. 23. When any office from any cause may become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have the power to fill the same by granting a commission, which shall expire when the person elected to fill said office, at the next general election, shall be duly qualified.
Vacancies in office not elsewhere provided for.	

ARTICLE VII.

JUDICIAL DEPARTMENT.

Judicial power, where vested.	SECTION 1. The judicial power of the state shall be vested in one supreme court; in circuit courts; in county and probate courts, and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary in municipal corporation courts, courts of common pleas, where established, and, when deemed expedient, may establish separate courts of chancery.
Establishment of additional courts	
Supreme court.	SEC. 2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, and elected as such; any two of whom shall constitute a quorum, and the concurrence of two judges shall, in every case, be necessary to a decision.
Chief justice.	
Quorum.	
Increase of number of judges of supreme court.	SEC. 3. When the population of the state shall amount to one million, the general assembly may, if deemed necessary, increase the number of judges of the supreme court to five; and, on such increase, a majority of judges shall be necessary to make a quorum or a decision.
General jurisdiction of supreme court.	SEC. 4. The supreme court, except in cases otherwise provided by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions as may from time to time be prescribed by law (ff). It shall have a general superintending control over all inferior courts of law

(ff) "Appellate jurisdiction." as used in this section, means the review by a superior court of the final judgment, order or decree of an inferior court. *Batesville and Brinkley Railroad Co. ex parte*, 39—82. The supreme court has no jurisdiction to compel a chancellor to grant an injunction refused in a case still pending before him; and an act of the legislature attempting to confer such jurisdiction is in conflict with this section, and also with section 15 of this article. *Ib.* See also *Payne v. McCabe*, 37—318.

and equity; and, in aid of its appellate and supervisory jurisdiction, it shall have power to issue writs of error and supersedeas, certiorari, habeas corpus, prohibition, mandamus and quo warranto, and other remedial writs, and to hear and determine the same (gg). Its judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

Jurisdiction of individual judges of supreme court.

SEC. 5. In the exercise of original jurisdiction the supreme court shall have power to issue writs of quo warranto to the circuit judges and chancellors when created, and to officers of political corporations when the question involved is the legal existence of such corporations (hh).

Jurisdiction of supreme court in quo warranto.

SEC. 6. A judge of the supreme court shall be at least thirty years of age, of good moral character, and learned in the law; a citizen of the United States and two years a resident of the state, and who has been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to eight years. The judges of the supreme court shall be elected by the qualified electors of the state and shall hold their offices during the term of eight years from the date of their commissions; but at the first meeting of the court after the first election under this constitution the judges shall by lot divide themselves into three classes, one of which shall hold his office for four, one for six and the other for eight years, after which each judge shall be elected for a full term of eight years. A record shall be made in the court of this classification.

Qualifications of judges of supreme court.

Election.

Term of office.

SEC. 7. The supreme court shall appoint its clerk and reporter, who shall hold their offices for six years, subject to removal for good cause.

Clerk and reporter of supreme court.
Term of office.

SEC. 8. The terms of the supreme court shall be held at the seat of government at the times that now are, or may be, provided by law.

Terms of supreme court.

SEC. 9. In case all or any of the judges of the supreme court shall be disqualified from presiding in any cause or causes the court or the disqualified judge shall certify the same to the governor, who shall immediately commission the requisite number of men learned in the law to sit in the trial and determination of such causes.

Special judges of supreme court.

SEC. 10. The supreme judges shall at stated times receive a compensation for their services to be ascertained by law, which shall not be, after the adjournment of the next general assembly, diminished during the time for which they shall have been elected. They shall not be allowed any fees or perquisites of office, nor hold any other office, nor hold any office of trust or profit under the state or the United States.

Compensation of supreme judges.

Their disqualification to hold other office.

(gg) The supreme court, in the exercise of its superintending control over inferior courts, has power to review on *certiorari* the decision of a circuit judge in refusing bail. *Harbour ex parte* 39—126; and cases cited by the court. For other illustrations of the supreme court's supervisory jurisdiction, see *Baxter v. Brooks*, 29—173; *McCreary v. Rogers, Jr.*, 35—228, and cases referred to above.

(hh) See *State v. Leatherman*, 38—81.

- Jurisdiction of circuit courts.** SEC. 11. The circuit court shall have jurisdiction in all civil and criminal cases the exclusive jurisdiction of which may not be vested in some other court provided for by this constitution (ii).
- Terms of circuit courts.** SEC. 12. The circuit courts shall hold their terms in each county at such times and places as are, or may be, prescribed by law.
- Judicial circuits.** SEC. 13. The state shall be divided into convenient circuits, each circuit to be made up of contiguous counties, for each of which circuits a judge shall be elected, who, during his continuance in office, shall reside in and be a conservator of the peace within the circuit for which he shall have been elected.
- Judge of circuit court to reside and be conservator of peace in his circuit.** SEC. 14. The circuit courts shall exercise a superintending control and appellate jurisdiction over county, probate, court of common pleas and corporation courts and justices of the peace, and shall have power to issue, hear and determine all the necessary writs to carry into effect their general and specific powers, any of which writs may be issued upon order of the judge of the appropriate court in vacation (jj).
- Superintending and appellate jurisdiction of circuit courts.** SEC. 15. Until the general assembly shall deem it expedient to establish courts of chancery the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.
- Equity jurisdiction of circuit courts.** SEC. 16. A judge of the circuit court shall be a citizen of the United States, at least twenty-eight years of age, of good moral character, learned in the law, two years a resident of the state, and shall have practiced law six years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to six years.
- Qualifications of judges of circuit courts.** SEC. 17. The judges of the circuit courts shall be elected by the qualified electors of the several circuits, and shall hold their offices for the term of four years.
- Election of judges of circuit courts.** SEC. 18. The judges of the circuit courts shall at stated times receive a compensation for their services, to be ascertained by law, which shall not, after the adjournment of the first session of the general assembly, be diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States.
- Term of office.**
- Compensation of judges of circuit courts.**
- Disqualification to hold other office.**

(ii) The correct method of ascertaining the civil and criminal jurisdiction of the circuit courts is to see what cases or class of cases are confided by the constitution exclusively to the jurisdiction of other tribunals, and the great residuum belongs exclusively, or concurrently, to the circuit courts. *State v. Devers*, 34—188.

It is not in the power of the legislature, under the provisions of this constitution, to deprive the circuit courts of all original jurisdiction of misdemeanors. *Ib.*

See section 40 of this article. Where no one of several debts sued on exceeds the sum of one hundred dollars the plaintiff can not combine them so as to give the circuit court jurisdiction. *Mannington v. Young*, 35—287. But see *Gregory v. Williams*, 24—177, as to demand on open account composed of several items.

(jj) As to the superintending control of the circuit courts over inferior courts, see *Carroll v. Crawford Co.*, 11—604; *Crise ex parte*, 16—194. *Derton v. Boyd*, 21—264. *Wyatt & Hensley v. Burr*, 25—476. *McKay v. Jones*, 30—151. *Street v. Stuart*, 38—159. *Haynes v. Semmes*, 39—399. *Baskins v. Wylds*, *Ib.*, 347.

SEC. 19. The clerks of the circuit court shall be elected by the qualified electors of the several counties, for the term of two years, and shall be ex-officio clerks of the county and probate courts and recorder; provided, that in any county having a population exceeding fifteen thousand inhabitants, as shown by the last federal census, there shall be elected a county clerk, in like manner as clerk of the circuit court, who shall be ex-officio clerk of the probate court of said county.

Clerks of circuit courts. Election. Term of office.

To be ex officio county and probate clerks and recorders. Separate county clerks in certain counties.

To be ex officio probate clerk.

SEC. 20. No judge or justice shall preside in the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by consanguinity or affinity, within such degree as may be prescribed by law; or in which he may have been of counsel or have presided in any inferior court.

Interest, consanguinity, etc., to disqualify judge from presiding at trial.

SEC. 21. Whenever the office of judge of the circuit court of any county is vacant at the commencement of a term of such court, or the judge of said court shall fail to attend, the regular practicing attorneys in attendance on said court may meet at 10 o'clock A. M. on the second day of the term, and elect a judge to preside at such court, or until the regular judge shall appear; and if the judge of said court shall become sick or die or unable to continue to hold such court after its term shall have commenced, or shall from any cause be disqualified from presiding at the trial of any cause then pending therein, then the regular practicing attorneys in attendance on said court may in like manner, on notice from the judge or clerk of said court, elect a judge to preside at such court or to try said causes, and the attorney so elected shall have the same power and authority in said court as the regular judge would have had if present and presiding; but this authority shall cease at the close of the term at which the election shall be made. The proceeding shall be entered at large upon the record. The special judge shall be learned in the law and a resident of the state (kk).

Special judges of circuit courts.

Powers of special judges.

Their qualifications.

SEC. 22. The judges of the circuit courts may temporarily exchange circuits or hold courts for each other under such regulations as may be prescribed by law.

Exchange of circuits.

SEC. 23. Judges shall not charge juries with regard to matters of fact, but shall declare the law (ll), and in jury trials shall reduce their charge or instructions to writing on the request of either party.

Charge to juries.

SEC. 24. The qualified electors of each circuit shall elect a

Prosecuting attorneys.

(kk) See *Fishback v. Weaver*, 34—569. When a special judge, elected in the absence of the regular judge, is disqualified in a particular case, another special judge may be elected for that case. *L. R. & Ft. S. R'y Co. v. Barker*, 39—491.

Parties to a suit in which the presiding judge is disqualified can not by agreement select a special judge to try the cause. *Dansby v. Beard*, 39—254.

(ll) If there is any evidence, however slight, pertinent to the issue, the court should not take it from the jury and direct their verdict. *L. R. & Ft. S. R'y Co. v. Perry*, 37—164; *Fitzpatrick v. State*, *Id.*, 239; *Shinn v. Tucker*, *Id.*, 580; *Overton v. Mathews*, 35—146; *L. R. & Ft. S. R'y Co. v. Barker*, 33—350; *St. Louis, I. M. & S. R'y Co. v. Vincent*, 36—451; *Harris v. State*, 34—469; *Edmonds v. State*, *Id.*, 743.

Term of office.	prosecuting attorney, who shall hold his office for the term of two years, and he shall be a citizen of the United States, learned in the law, and a resident of the circuit for which he may be elected.
Qualifications.	
Judges prohibited from practicing law.	SEC. 25. The judges of the supreme, circuit or chancery courts shall not, during their continuance in office, practice law or appear as counsel in any court, state or federal, within this state.
Contempts not in presence of court or disobedience of process.	SEC. 26. The general assembly shall have power to regulate by law the punishment of contempts not committed in the presence or hearing of the courts, or in disobedience of process.
Removal of county and township officers.	SEC. 27. The circuit court shall have jurisdiction upon information, presentment or indictment to remove any county or township officer from office for incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance or non-feasance in office (mm).
Jurisdiction of county courts.	SEC. 28. The county courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. The county court shall be held by one judge, except in cases otherwise herein provided (nn).
County court to be held by one judge.	
Judges of county courts. Election. Term of office. Qualifications.	SEC. 29. The judge of the county court shall be elected by the qualified electors of the county for the term of two years. He shall be at least twenty-five years of age, a citizen of the United States, a man of upright character, of good business education and a resident of the state for two years before his election, and a resident of the county at the time of his election and during his continuance in office.
Quorum of the county. Powers.	SEC. 30. The justices of the peace of each county shall sit with and assist the county judge in levying the county taxes, and in making appropriations for the expenses of the county in the manner to be prescribed by law; and the county judge, together with a majority of said justices, shall constitute a quorum for such purposes; and in the absence of the county judge a majority of the justices of the peace may constitute the court, who shall elect one of their number to preside (*). The general assembly shall regulate by law the manner of compelling the attendance of such quorum.
Majority must sit	
Compulsory attendance.	

(mm) See *Allen v. State*, 32—241.

(nn) The county courts are mere continuations of the former boards of supervisors. *Dodson v. Mayor, etc.*, 33—508; *Schedule, sec. 23*. They must be held by the county judges alone, except for the purposes mentioned in section 30. See *Worthen v. Badgett*, 32—496; *Lawrence Co. v. Coffman*, 36—641; *Hovell: in matter of free ferries, Id.*, 466.

Section 28 did not abrogate the jurisdiction of municipal courts to punish vagrancy; the jurisdiction it confers extends only to such matters of police regulation as are designed to prevent vagrants from becoming burdensome to the county. *Brizzolari v. State*, 37—364.

The county court has exclusive original jurisdiction of the matter of removing a county seat, and to determine whether a majority of the electors of a county have voted for such removal. *Russell v. Jacoway, J.*, 33—191.

(*) See section 28 and note (nn).

SEC. 31. The terms of the county courts shall be held at the times that are now prescribed for holding the supervisors' courts, or may hereafter be prescribed by law.

Terms of county courts.

SEC. 32. The general assembly may authorize the judge of the county court of any one or more counties to hold severally a quarterly court of common pleas in their respective counties, which shall be a court of record, with such jurisdiction in matters of contract and other civil matters not involving title to real estate as may be vested in such court.

Courts of common pleas.

Jurisdiction.

SEC. 33. Appeals from all judgments of county courts or courts of common pleas, when established, may be taken to the circuit court under such restrictions and regulations as may be prescribed by law (oo).

Appeals from county courts and courts of common pleas.

SEC. 34. The judge of the county court shall be the judge of the court of probate, and have such exclusive original jurisdiction in matters relative to the probate of wills, the estates of deceased persons, executors, administrators, guardians and persons of unsound mind and their estates as is now vested in the circuit court, or may be hereafter prescribed by law. The regular terms of the court of probate shall be held at the times that may hereafter be prescribed by law (pp).

Courts of probate Jurisdiction.

Terms.

SEC. 35. Appeals may be taken from judgments and orders of the probate court to the circuit court under such regulations and restrictions as may be prescribed by law.

Appeals from probate courts.

SEC. 36. Whenever a judge of the county or probate court may be disqualified from presiding in any cause or causes pending in his court, he shall certify the facts to the governor of the state, who shall thereupon commission a special judge to preside in such cause or causes during the time said disqualification may continue, or until such cause or causes may be finally disposed of.

Special judges for county and probate courts.

SEC. 37. The county judge shall receive such compensation for his services as presiding judge of the county court, as judge of the court of probate and judge of the court of common pleas, when established, as may be provided by law. In the absence of the circuit judge from the county the county judge shall have power to issue orders for injunction and other provisional writs in their counties, returnable to the court having jurisdiction, provided that either party may have such order reviewed by any superior judge in vacation in such manner as shall be provided by law. The county judge shall have power, in the absence of the circuit judge from the county, to issue, hear and determine writs of habeas corpus under such regulations and restrictions as shall be provided by law.

Compensation of county judge.

His jurisdiction in absence of circuit judge from county.

SEC. 38. The qualified electors of each township shall elect the justices of the peace for the term of two years, who shall be com-

Justices of the peace. Election. Term of office.

(oo) See *Dodson v. Mayor, etc.*, 33—508; *Phillips County v. Lee County*, 34—240. See also section 51.

(pp) As to jurisdiction of the probate courts, see *West v. Waddell*, 33—575; *Reinhardt, et al. v. Gattrell, Jr.*, 727; *Mock v. Pleasants*, 34—63, and *Hall v. Brewer*, 40—433. See also *Schedule*, sec. 23.

Commission.	missioned by the governor, and their official oath shall be indorsed on the commission.
Number of justices of the peace.	SEC. 39. For every two hundred electors there shall be elected one justice of the peace, but every township, however small, shall have two justices of the peace.
Jurisdiction of justices of the peace. 1st. Exclusive of circuit court.	SEC. 40. They shall have original jurisdiction in the following matters: First, exclusive of the circuit court, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars, excluding interest, and concurrent jurisdiction in matters of contract where the amount in controversy does not exceed the sum of three hundred dollars, exclusive of interest; second, concurrent jurisdiction in suits for the recovery of personal property where the value of the property does not exceed the sum of three hundred dollars, and in all matters of damage to personal property where the amount in controversy does not exceed the sum of one hundred dollars; third, such jurisdiction of misdemeanors as is now, or may be, prescribed by law; fourth, to sit as examining courts and commit, discharge or recognize offenders to the court having jurisdiction, for further trial, and to bind persons to keep the peace or for good behavior; fifth, for the foregoing purposes they shall have power to issue all necessary process; sixth, they shall be conservators of the peace within their respective counties, provided a justice of the peace shall not have jurisdiction where a lien on land or title or possession thereto is involved (qq).
2d. Concurrent with circuit court.	
3d. In misdemeanors.	
4th. As examining courts;	
And to bind to keep the peace. 5th. To issue process. 6th. As conservators of the peace. Denied jurisdiction in questions of land.	
Qualifications of justices of the peace.	SEC. 41. A justice of the peace shall be a qualified elector and a resident of the township for which he is elected.
Appeals from justices of the peace.	SEC. 42. Appeals may be taken from the final judgments of the justices of the peace to the circuit courts under such regulations as are now, or may be, provided by law.
Jurisdiction of corporation courts.	SEC. 43. Corporation courts for towns and cities may be invested with jurisdiction concurrent with justices of the peace in civil and criminal matters, and the general assembly may invest such of them as it may deem expedient with jurisdiction of any criminal offenses not punishable by death or imprisonment in the penitentiary, with or without indictment, as may be provided by law, and, until the general assembly shall otherwise provide, they shall have the jurisdiction now provided by law.
Pulaski chancery court.	SEC. 44. The Pulaski Chancery Court shall continue in existence until abolished by law, or the business pending at the adoption of this constitution shall be disposed of, or the pending business be transferred to other courts. The judge and clerk of said court shall hold office for the term of two years, and shall be elected by the qualified voters of the state. All suits and proceedings which relate to sixteenth-section lands or to money due for said
Term of office of judge and clerk. Election.	
Proceedings relative to sixteenth section lands.	

(qq) See note (ii); also *Thomn v. State*, 35—327; *McClure v. Hill*, 36—268; *Nolen v. Royston*, *Ib.*, 561; *Hibbard v. Kirby*, 38—102; *School District v. Williams*, *Ib.*, 454; *Bramble v. Beidler*, *Ib.*, 200; *Jordan v. Henderson*, 37—120; *White v. Millbourne*, 31—486; *Wells v. Steele*, *Ib.*, 219; *Mathews v. Morris*, *Ib.*, 222.

lands shall be transferred to the respective counties where such lands are located in such manner as shall be provided by the general assembly at the next session.

SEC. 45. The separate criminal courts established in this state are hereby abolished, and all the jurisdiction exercised by said criminal courts is vested in the circuit courts of the respective counties; and all causes now pending therein are hereby transferred to said circuit courts respectively. It shall be the duty of the clerks of said criminal courts to transfer all the records, books and papers pertaining to said criminal courts to the circuit courts of their respective counties.

Separate criminal courts abolished.
Their jurisdiction transferred to circuit courts.

Their records.

SEC. 46. The qualified electors of each county shall elect one sheriff, who shall be ex-officio collector of taxes, unless otherwise provided by law (rr); one assessor, one coroner, one treasurer, who shall be ex-officio treasurer of the common school fund of the county, and one county surveyor, for the term of two years, with such duties as are now or may be prescribed by law. Provided, that no per centum shall ever be paid to assessors upon the valuation or assessment of property by them.

County executive officers.

Term of office.

Compensation of assessors.

SEC. 47. The qualified electors of each township shall elect a constable for the term of two years, who shall be furnished by the presiding judge of the county court with a certificate of election, on which his official oath shall be indorsed.

Constables.

Their commissions.

SEC. 48. All officers provided for in this article, except constables, shall be commissioned by the governor.

Commissions of officers.

SEC. 49. All writs and other judicial process shall run in the name of the State of Arkansas, bear test and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

Style of process and indictments.

SEC. 50. All vacancies occurring in any office provided for in this article shall be filled by special election, save that in case of vacancies occurring in county and township offices six months, and in other offices nine months, before the next general election; such vacancies shall be filled by appointment by the governor (ss).

Vacancies in offices provided for in art. VII.

SEC. 51. That in all cases of allowances made for or against counties, cities or towns, an appeal shall lie to the circuit court of the county, at the instance of the party aggrieved, or on the intervention of any citizen or resident and tax-payer of such county, city or town, on the same terms and conditions on which appeals may be granted to the circuit court in other cases; and the matter pertaining to any such allowance shall be tried in the circuit court *de novo*. In case an appeal be taken by any citizen, he shall give a bond, payable to the proper county, conditioned

Appeals in cases of allowances for or against counties, cities or towns.

Appeal bond.

(rr) Under existing laws a person who is sheriff and collector holds two offices. *McCabe ex parte*, 33—396. But section 46 makes the office of collector subject to the control of the legislature, which has power to provide for his appointment by the governor, or in any other mode it may direct. *Falconer v. Shores*, 37—386.

(ss) The office of collector of revenue is not elective, and the filling of vacancies in the office is not within the provision of section 50. *Falconer v. Shores*, 37—386.

to prosecute the appeal and save the county from costs on account of the same being taken.

Contested election for county, township or municipal officers.

SEC. 52. That in all cases of contest for any county, township or municipal office, an appeal shall lie at the instance of the party aggrieved, from any inferior board, council or tribunal to the circuit court, on the same terms and conditions on which appeals may be granted to the circuit court in other cases, and on such appeals the case shall be tried *de novo*.

ARTICLE VIII.

APPORTIONMENT.

Number of representatives.

Ratio of representation.

Apportionment of representatives.

SECTION 1. The house of representatives shall consist of not less than seventy-three, nor more than one hundred members. Each county now organized shall always be entitled to one representative, the remainder to be apportioned the several counties according to the number of adult male inhabitants, taking two thousand as the ratio, until the number of representatives amounts to one hundred, when they shall not be further increased; but the ratio of representation shall, from time to time, be increased, as hereinafter provided, so that the representatives shall never exceed that number. And until the enumeration of the inhabitants is taken by the United States government, A. D. 1880, the representatives shall be apportioned among the several counties, as follows:

The County of Arkansas shall elect one representative. The County of Ashley shall elect one representative. The County of Benton shall elect two representatives. The County of Boone shall elect one representative. The County of Bradley shall elect one representative. The County of Baxter shall elect one representative. The County of Calhoun shall elect one representative. The County of Carroll shall elect one representative. The County of Chicot shall elect one representative. The County of Columbia shall elect two representatives. The County of Clark shall elect two representatives. The County of Conway shall elect one representative. The County of Craighead shall elect one representative. The County of Crawford shall elect one representative. The County of Cross shall elect one representative. The County of Crittenden shall elect one representative. The County of Clayton shall elect one representative. The County of Dallas shall elect one representative. The County of Desha shall elect one representative. The County of Drew shall elect one representative. The County of Dorsey shall elect one representative. The County of Franklin shall elect one representative. The County of Fulton shall elect one representative. The County of Faulkner shall elect one representative. The County of Grant shall elect one representative. The County of Greene shall elect one representative. The County of Garland shall elect one representative. The County of Hempstead shall

elect two representatives. The County of Hot Spring shall elect one representative. The County of Howard shall elect one representative. The County of Independence shall elect two representatives. The County of Izard shall elect one representative. The County of Jackson shall elect one representative. The County of Jefferson shall elect three representatives. The County of Johnson shall elect one representative. The County of Lafayette shall elect one representative. The County of Lawrence shall elect one representative. The County of Little River shall elect one representative. The County of Lonoke shall elect two representatives. The County of Lincoln shall elect one representative. The County of Lee shall elect two representatives. The County of Madison shall elect one representative. The County of Marion shall elect one representative. The County of Monroe shall elect one representative. The County of Montgomery shall elect one representative. The County of Mississippi shall elect one representative. The County of Nevada shall elect one representative. The County of Newton shall elect one representative. The County of Ouachita shall elect two representatives. The County of Perry shall elect one representative. The County of Phillips shall elect three representatives. The County of Pike shall elect one representative. The County of Polk shall elect one representative. The County of Pope shall elect one representative. The County of Poinsett shall elect one representative. The County of Pulaski shall elect four representatives. The County of Prairie shall elect one representative. The County of Randolph shall elect one representative. The County of Saline shall elect one representative. The County of Sarber shall elect one representative. The County of Scott shall elect one representative. The County of Searcy shall elect one representative. The County of Sebastian shall elect two representatives. The County of Sevier shall elect one representative. The County of St. Francis shall elect one representative. The County of Stone shall elect one representative. The County of Union shall elect two representatives. The County of Van Buren shall elect one representative. The County of Washington shall elect three representatives. The County of White shall elect two representatives. The County of Woodruff shall elect one representative. The County of Yell shall elect one representative. The County of Sharp shall elect one representative (*).

SEC. 2. The legislature shall from time to time divide the state into convenient senatorial districts in such manner that the senate shall be based upon the adult male inhabitants of the state, each senator representing an equal number as nearly as practicable, and until the enumeration of the inhabitants is taken by the United States government, A. D. 1880, the districts shall be arranged as follows:

Division of state into senatorial districts.
Ratio of representation in senate.

Present senatorial districts and apportionment of senators:

(*) The County of Miller shall be entitled to one representative. Act March 18, 1881. Cleburne County shall be entitled to one representative. Act Feb. 20, 1883.

- 1st district. The Counties of Greene, Craighead and Clayton shall compose the First District and elect one senator.
- 2d district. The Counties of Randolph, Lawrence and Sharp shall compose the Second District and elect one senator.
- 3d district. The Counties of Carroll, Boone and Newton shall compose the Third District and elect one senator.
- 4th district. The Counties of Johnson and Pope shall compose the Fourth District and elect one senator.
- 5th district. The County of Washington shall compose the Fifth District and elect one senator.
- 6th district. The Counties of Independence and Stone shall compose the Sixth District and elect one senator.
- 7th district. The Counties of Woodruff, St. Francis, Cross and Crittenden shall compose the Seventh District and elect one senator.
- 8th district. The Counties of Yell and Sarber shall compose the Eighth District and elect one senator.
- 9th district. The Counties of Saline, Garland (**), Hot Spring and Grant shall compose the Ninth District and elect one senator.
- 10th district. The Counties of Pulaski and Perry shall compose the Tenth District and elect two senators.
- 11th district. The County of Jefferson shall compose the Eleventh District and elect one senator.
- 12th district. The Counties of Lonoke and Prairie shall compose the Twelfth District and elect one senator.
- 13th district. The Counties of Arkansas and Monroe shall compose the Thirteenth District and elect one senator.
- 14th district. The Counties of Phillips and Lee shall compose the Fourteenth District and elect one senator.
- 15th district. The Counties of Desha and Chicot shall compose the Fifteenth District and elect one senator.
- 16th district. The Counties of Lincoln, Dorsey and Dallas shall compose the Sixteenth District and elect one senator.
- 17th district. The Counties of Drew and Ashley shall compose the Seventeenth District and elect one senator.
- 18th district. The Counties of Bradley and Union shall compose the Eighteenth District and elect one senator.
- 19th district. The Counties of Calhoun and Ouachita shall compose the Nineteenth District and elect one senator.
- 20th district. The Counties of Hempstead and Nevada shall compose the Twentieth District and elect one senator.
- 21st district. The Counties of Columbia and Lafayette shall compose the Twenty-first District and elect one senator.
- 22d district. The Counties of Little River, Sevier, Howard and Polk shall compose the Twenty-second District and elect one senator.
- 23d district. The Counties of Fulton, Izard, Marion and Baxter shall compose the Twenty-third district and elect one senator.
- 24th district. The Counties of Benton and Madison shall compose the Twenty-fourth District and elect one senator.

(**) See note (*) *post*.

The Counties of Crawford and Franklin shall compose the 25th district.
Twenty-fifth District and elect one senator.

The Counties of Van Buren, Conway and Searcy shall com- 26th district.
pose the Twenty-sixth District and elect one senator.

The Counties of White and Faulkner shall compose the Twenty- 27th district.
seventh District and elect one senator.

The Counties of Sebastian and Scott shall compose the Twenty- 28th district.
eighth District and elect one senator.

The Counties of Poinsett, Jackson and Mississippi shall com- 29th district.
pose the Twenty-ninth District and elect one senator.

The Counties of Clark, Pike and Montgomery shall compose 30th district.
the Thirtieth District and elect one senator (*).

And the senate shall never consist of less than thirty nor more than thirty-five members. Number of sena-
tors.

SEC. 3. Senatorial districts shall at all times consist of con-
tiguous territory, and no county shall be divided in the formation
of a senatorial district. Principles of
formation of sen-
atorial districts.

SEC. 4. The division of the state into senatorial districts and
the apportionment of representatives to the several counties shall
be made by the general assembly at the first regular session after
each enumeration of the inhabitants of the state by the federal or
state government shall have been ascertained, and at no other time. Apportionments,
when to be made.

ARTICLE IX.

EXEMPTION.

SECTION 1. The personal property of any resident of this state
who is not married or the head of a family, in specific articles to
be selected by such resident, not exceeding in value the sum of
two hundred dollars in addition to his or her wearing apparel,
shall be exempt from seizure on attachment, or sale on execution,
or other process from any court issued for the collection of any
debt by contract (tt); provided that no property shall be exempt
from execution for debts contracted for the purchase money there-
for while in the hands of the vendee. Exemption of
personal prop-
erty of persons
other than heads
of families from
seizure for debt.

SEC. 2. The personal property of any resident of this state who
is married or the head of a family, in specific articles to be selected
Exemption of
personal prop-
erty of heads of
families.

(*) The Counties of Garland and Montgomery shall compose the Thirty-first Senatorial
District and elect one senator. *Act March 6, 1883.*

Cleburne County shall be included in the Twenty-sixth Senatorial District. *Act Feb. 20,
1883.*

Miller County is included in the Twenty-first District. See *Act Dec. 22, 1874, sec. 21.*

(tt) The exemption clause of the constitution is highly remedial and should be liberally
construed. The statutory action for use and occupation is subject to exemption under this
section. *S. L., I. M. & S. Ry. Co. v. Hart, 38—112.* But personal property is not exempt from
judgments for tort or fraud, nor from the costs in such cases. *Musick v. Enyart, 33—688.*
Smith v. Ragdale, 36—297.

Exempted personal property may be sold by the debtor, and the execution creditor can
not follow it into the hands of the purchaser; but property taken in exchange must take
its position subject to the exemption laws in force, and retains its own nature. *Bennett v.
Hulsem, 33—762.*

The exemption laws are for the protection of the poor, and the state is subject to their
operation. They apply to a judgment on a bail bond and executions issued on it. *Eate v
Williford, 36—155.*

by such resident, not exceeding in value the sum of five hundred dollars in addition to his or her wearing apparel, and that of his or her family, shall be exempt from seizure on attachment, or sale on execution, or other process from any court on debt by contract (*).

Homestead exemption.

SEC. 3. The homestead of any resident of this state who is married or the head of a family shall not be subject to the lien of any judgment, or decree of any court, or to sale under execution or other process thereon, except such as may be rendered for the purchase money or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by them and other trustees of an express trust for moneys due from them in their fiduciary capacity (uu).

Extent of exemption of homestead outside of city, town or village.

SEC. 4. The homestead outside any city, town or village, owned and occupied as a residence, shall consist of not exceeding one hundred and sixty acres of land, with the improvements thereon, to be selected by the owner, provided the same shall not exceed in value the sum of twenty-five hundred dollars, and in no event shall the homestead be reduced to less than eighty acres, without regard to value.

Extent of exemption of homestead situate in city, town or village.

SEC. 5. The homestead in any city, town or village, owned and occupied as a residence, shall consist of not exceeding one acre of land, with the improvements thereon, to be selected by the owner, provided the same shall not exceed in value the sum of two thousand five hundred dollars, and in no event shall such homestead be reduced to less than one-quarter of an acre of land, without regard to value.

Homestead exemption for benefit of widow.

SEC. 6. If the owner of a homestead die, leaving a widow, but no children, and said widow has no separate homestead in her own right, the same shall be exempt and the rents and profits thereof shall vest in her during her natural life, provided that if the owner leaves children, one or more, said child or children shall share with said widow and be entitled to half the rents and profits till each of them arrives at twenty-one years of age—each child's rights to cease at twenty-one years of age—and the shares to go to the younger children, and then all to go to the widow, and provided that said widow or children may reside on the homestead or not; and in case of the death of the widow all of said homestead

Proviso — rights of children during minority.

(*) See note (tt).

(uu) As to contracts made before the adoption of the constitution of 1868, the homestead exemption act of 1852 was revived by the first section of the schedule to this constitution. *Lindsay v. Norrill*, 36—545. As to debts contracted after the adoption of the constitution of 1868 and before the adoption of this constitution, see section 9 of this article. For meaning of term "homestead," see *Williams v. Dorris*, 31—463.

A debtor does not forfeit his homestead rights by making a fraudulent conveyance of the homestead. *Bennett v. Hulson*, 33—762. But in a suit to set aside such conveyance the homestead must be claimed. *Turner v. Vaughn*, *Id.*, 454.

A tenant in common is entitled to a homestead in the estate in common. *Sentell v. Armor*, 35—49. *Sims v. Thompson*, 39—301.

Continuous actual occupation is not necessary to preserve a homestead. Removal for a temporary purpose or with the intention of reoccupying it will not forfeit the homestead right. *Euper v. Alkire*, 57—283.

shall be vested in the minor children of the testator or intestate (vv).

SEC. 7. The real and personal property of any *femme covert* in this state acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain her separate estate and property and may be devised, bequeathed or conveyed by her the same as if she were a *femme sole*, and the same shall not be subject to the debts of her husband (ww).

Separate property of married women.

SEC. 8. The general assembly shall provide for the time and mode of scheduling the separate personal property of married women.

Scheduling of separate personal property of married women

SEC. 9. The exemptions contained in the constitution of 1868 shall apply to all debts contracted since the adoption thereof and prior to the adoption of this constitution.

Effect of exemptions of constitution of 1868.

SEC. 10. The homestead provided for in this article shall inure to the benefit of the minor children, under the exemptions herein provided, after the decease of the parents.

Homestead exemption for benefit of minor orphan children.

ARTICLE X.

AGRICULTURE, MINING AND MANUFACTURE.

SECTION 1. The general assembly shall pass such laws as will foster and aid the agricultural, mining and manufacturing interests of the state, and may create a bureau to be known as the mining, manufacturing and agricultural bureau.

Agricultural, mining and manufacturing interests of state. Mining, manufacturing and agricultural bureau.

SEC. 2. The general assembly, when deemed expedient, may create the office of state geologist, to be appointed by the governor, by and with the advise and consent of the senate, who shall hold his office for such time and perform such duties and receive such compensation as may be prescribed by law. Provided, that he shall be at all times subject to removal by the governor for incompetency or gross neglect of duty.

State geologist.

Term of office.

Compensation.

Removal.

SEC. 3. The general assembly may, by general law, exempt from taxation for the term of seven years from the ratification of this constitution the capital invested in any or all kinds of mining and manufacturing business in this state, under such regulations and restrictions as may be prescribed by law.

Exemption from taxation of mines and manufactures.

(vv) See *Johnston v. Turner*, 29—280; *Hoback v. Hoback*, 33—399; *Booth v. Goodwin*, 29—63; *Alzheimer v. Davis*, 37—316.

(ww) The effect of this section is to make all property acquired after the adoption of this constitution by a woman who is, or may afterward become, *covert* her separate property as effectually as if conveyed to her by deed to her separate use. *Ward v. Estate of Ward*, 36—586. But this constitution did not and could not divest the vested marital rights of the husband acquired in lands of the wife before its adoption. *Shryock v. Cannon*, 39—434.

Under this provision (section 7) a married woman may convey her separate estate and acknowledge the execution of a deed for registration as a *femme sole*, and if her acknowledgment be insufficient to admit her deed to registration it will still be good between her and her grantee. *Roberts and Wife v. Wilcoxson and Rose*, 36—355. She can not, however, make an executory contract to convey land which will bind her or her heirs; but if, under such executory contract, her vendee should make payments on the land, such payments will be a charge upon it enforceable in equity upon her refusal to convey. *Felkner v. Tighe*, 39—357.

See also *Chrisman v. Partee and Wife*, 38—31.

ARTICLE XI.

MILITIA.

Persons liable to military duty.

Organization of militia.

Volunteer companies.

Privilege of militia from arrest at muster, etc.

Authority to call out volunteers and militia.

SECTION 1. The militia shall consist of all able-bodied male persons, residents of the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or this state, and shall be organized, officered, armed and equipped and trained in such manner as may be provided by law.

SEC. 2. Volunteer companies of infantry, cavalry or artillery may be formed in such manner and with such restrictions as may be provided by law.

SEC. 3. The volunteer and militia forces shall in all cases (except treason, felony and breach of the peace) be privileged from arrest during their attendance at muster and the election of officers, and in going to and returning from the same.

SEC. 4. The governor shall, when the general assembly is not in session, have power to call out the volunteers or militia, or both, to execute the laws, repel invasion, repress insurrection and preserve the public peace in such manner as may be authorized by law.

ARTICLE XII.

MUNICIPAL AND PRIVATE CORPORATIONS.

Revocation of existing charters and grants for non use.

Limitation of power of incorporation by special act.

Incorporation of cities and towns.

Limitation of legislative power of municipal corporations: And of their power of taxation. Payment of existing indebtedness

SECTION 1. All existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place and business been commenced in good faith at the time of the adoption of this constitution shall thereafter have no validity.

SEC. 2. The general assembly shall pass no special act conferring corporate powers, except for charitable, educational, penal or reformatory purposes, where the corporations created are to be and remain under the patronage and control of the state (xx).

SEC. 3. The general assembly shall provide, by general laws, for the organization of cities (which may be classified) and incorporated towns, and restrict their power of taxation, assessment, borrowing money and contracting debts, so as to prevent the abuse of such power (yy).

SEC. 4. No municipal corporation shall be authorized to pass any laws contrary to the general laws of the state; nor levy any tax on real or personal property to a greater extent, in one year, than five mills on the dollar of the assessed value of the same. Provided, that, to pay indebtedness existing at the time

(xx) See *City of Little Rock v. Parish, county clerk*, 36—166.

(yy) A municipal corporation has no inherent power to levy taxes. It can only levy such as are authorized by law, and the legislature has power, subject to constitutional limitations, to provide in what manner and to what extent taxes shall be levied to support municipal corporations and how their debts shall be paid. *Vance v. City of Little Rock*, 30—435. See note (bbb) *post*.

of the adoption of this constitution, an additional tax of not more than five mills on the dollar may be levied (zz).

SEC. 5. No county, city, town or other municipal corporation shall become a stockholder in any company, association or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.

Municipal corporations not to become stockholders. Or financially assist corporations, etc.

SEC. 6. Corporations may be formed under general laws, which laws may, from time to time, be altered or repealed. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revokable at the adoption of this constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this state, in such manner, however, that no injustice shall be done to the corporators.

General incorporation laws. Power of alteration and revocation.

SEC. 7. Except as herein provided, the state shall never become a stockholder in, or subscribe to, or be interested in, the stock of any corporation or association.

State not to be interested in stock of corporations, etc.

SEC. 8. No private corporation shall issue stocks or bonds, except for money or property actually received or labor done, and all fictitious increase of stock or indebtedness shall be void; nor shall the stock or bonded indebtedness of any private corporation be increased, except in pursuance of general laws, nor until the consent of the persons holding the larger amount in value of stock shall be obtained at a meeting held after notice given for a period not less than sixty days, in pursuance of law.

Issue and increase of stock, etc., of private corporations.

SEC. 9. No property, nor right of way, shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner, in money, or first secured to him by a deposit of money, which compensation, irrespective of any benefit from any improvement proposed by such corporation, shall be ascertained by a jury of twelve men, in a court of competent jurisdiction, as shall be prescribed by law (aaa).

Compensation for property and right of way taken for use of corporations.

SEC. 10. No act of the general assembly shall be passed authorizing the issue of bills, notes or other paper which may circulate as money.

Legislation authorizing issue of circulating paper prohibited.

SEC. 11. Foreign corporations may be authorized to do business in this state under such limitations and restrictions as may be prescribed by law. Provided, that no such corporation shall do any business in this state except while it maintains therein one or more known places of business and an authorized agent or agents

Foreign corporations.

(zz) It was the intention of the constitutional convention to cut off utterly all power in counties, cities and towns to levy taxes beyond the limits assigned in this section and in section 9 of article 16. But where bonds had been lawfully issued by them, under a law directing a levy of taxes to pay them, such bonds are protected by the constitution of the United States; and the constitutional limit of five mills for old indebtedness existing at the ratification of the constitution may be exceeded, if necessary, for the payment of such debts. But there is no power after having levied a tax for such protected debt to levy besides a tax of five mills for other indebtedness. *Brodie v. McCabe*, 33—690. See note (bbh) post.

(aaa) The owner's damages for the right of way to a railroad over his land can not be diminished by the estimated benefit likely to accrue to his remaining property. *St. L., A. & T. Railroad v. Anderson*, 39—167.

in the same upon whom process may be served; and, as to contracts made or business done in this state, they shall be subject to the same regulations, limitations and liabilities as like corporations of this state, and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this state, nor shall they have power to condemn or appropriate private property.

State not to assume liabilities of counties or corporations.

Exceptions.

Indebtedness of corporations to state.

SEC. 12. Except as herein otherwise provided, the state shall never assume or pay the debt or liability of any county, town, city or other corporation whatever, or any part thereof, unless such debt or liability shall have been created to repel invasion, suppress insurrection or to provide for the public welfare and defense. Nor shall the indebtedness of any corporation to the state ever be released or in any manner discharged save by payment into the public treasury.

ARTICLE XIII.

COUNTIES, COUNTY SEATS AND COUNTY LINES (bbb).

Minimum limits of counties prescribed.

Exceptions.

Consent of voters of territory affected requisite to change of county lines.

Change of county seat.

County seats of new counties.

Lines of new counties.

Division of Sebastian County into two districts

SECTION 1. No county now established shall be reduced to an area of less than six hundred square miles nor to less than five thousand inhabitants; nor shall any new county be established with less than six hundred square miles and five thousand inhabitants (ccc). Provided, that this section shall not apply to the Counties of Lafayette, Pope and Johnson, nor be so construed as to prevent the general assembly from changing the line between the Counties of Pope and Johnson.

SEC. 2. No part of a county shall be taken off to form a new county or a part thereof without the consent of a majority of the voters in such part proposed to be taken off (ddd).

SEC. 3. No county seat shall be established or changed without the consent of a majority of the qualified voters of the county to be affected by such change, nor until the place at which it is proposed to establish or change such county seat shall be fully designated. Provided, that in formation of new counties the county seat may be located temporarily by provisions of law.

SEC. 4. In the formation of new counties no line thereof shall run within ten miles of the county seat of the county proposed to be divided, except the county seat of Lafayette County.

SEC. 5. Sebastian County may have two districts and two county seats, at which county, probate and circuit courts shall be held as may be provided by law, each district paying its own expenses.

(bbb) Counties, cities and towns are municipal corporations created by the legislature, and derive all their powers from it unless otherwise provided by the state constitution. *Eagle v. Beard*, 33—497.

(ccc) See *Bittle v. Stuart*, *judge*, 34—224.

(ddd) The power to change county lines is inherent in the legislature, subject to express constitutional restrictions and the essential requisites of the state which are implied in our frame of government. The consent of a majority of the voters in the part taken off is only required in the case of new counties to be formed out of portions of old ones. *Reynolds v. Holland*, 35—56; *Pulaski Co. v. County Judge of Saline Co.*, 37—339.

ARTICLE XIV.

EDUCATION.

SECTION 1. Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the state shall ever maintain a general, suitable and efficient system of free schools whereby all persons in the state between the ages of six and twenty-one years may receive gratuitous instruction.

Free school system.

SEC. 2. No money or property belonging to the public school fund, or to this state for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.

School funds to be used exclusively for purposes for which set apart.

SEC. 3. The general assembly shall provide by general laws for the support of common schools by taxes, which shall never exceed in any one year two mills on the dollar on the taxable property of the state, and by an annual *per capita* tax of one dollar, to be assessed on every male inhabitant of this state over the age of twenty-one years. Provided, the general assembly may by general law authorize school districts to levy by a vote of the qualified electors of such district a tax not to exceed five mills on the dollar in any one year for school purposes (eee). Provided further, that no such tax shall be appropriated to any other purpose nor to any other district than that for which it was levied.

State school tax.

Poll tax for school fund.

School district tax.

SEC. 4. The supervision of public schools and the execution of the laws regulating the same shall be vested in and confided to such officers as may be provided for by the general assembly.

Supervision of public schools etc.

ARTICLE XV.

IMPEACHMENT AND ADDRESS.

SECTION 1. The governor and all state officers, judges of the supreme and circuit courts, chancellors and prosecuting attorneys shall be liable to impeachment for high crimes and misdemeanors and gross misconduct in office, but the judgment shall go no further than removal from office and disqualification to hold any office of honor, trust or profit under this state. An impeachment, whether successful or not, shall be no bar to an indictment.

Impeachments.

Judgment.

SEC. 2. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members thereof. The chief justice shall preside unless he is impeached or otherwise disqualified, when the senate shall select a presiding officer.

Power of impeachment. Trial.

(eee) This clause deprived the county courts of jurisdiction to levy the district school taxes in cities and towns organized into single school districts upon the estimate of the board of school directors and without a vote of the electors of the district. *Cole v. Blackwell*, 38-271.

Removal upon
address.

SEC. 3. The governor, upon the joint address of two-thirds of the members elected to each house of the general assembly, for good cause, may remove the auditor, treasurer, secretary of state, attorney-general, judges of the supreme and circuit courts, chancellors and prosecuting attorneys.

ARTICLE XVI.

FINANCE AND TAXATION.

Loan of public
credit prohibited

Issue of interest
bearing evi-
dences of public
indebtedness, ex-
cept to pay pres-
ent debt, prohib-
ited.

Payment of state
debt.

Misappropria-
tion of public
moneys.

Salaries and fees.

Clerks, etc., of
departments of
state.

Uniform rule of
taxation.

Taxation of priv-
ileges, etc.

Property exempt
from taxation.

SECTION 1. Neither the state nor any city, county, town or other municipality in this state shall ever loan its credit for any purpose whatever; nor shall any county, city, town or municipality ever issue any interest-bearing evidences of indebtedness, except such bonds as may be authorized by law to provide for and secure the payment of the present existing indebtedness, and the state shall never issue any interest-bearing treasury warrants or scrip (fff).

SEC. 2. The general assembly shall from time to time provide for the payment of all just and legal debts of the state.

SEC. 3. The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any officer of the state or member or officer of the general assembly, shall be punishable as may be provided by law; but part of such punishment shall be disqualification to hold office in this state for a period of five years.

SEC. 4. The general assembly shall fix the salaries and fees of all officers in the state, and no greater salary or fee than that fixed by law shall be paid to any officer, employe or other person, or at any rate other than par value; and the number and salaries of the clerks and employes of the different departments of the state shall be fixed by law.

SEC. 5. All property subject to taxation shall be taxed according to its value (ggg), that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, provided the general assembly shall have power from time to time to tax hawkers, peddlers, ferries, exhibitions and privileges in such manner as may be deemed proper. Provided, further, that the following property shall be exempt from taxation: Public property used exclusively for public purposes; churches used as such; cemeteries used exclusively as such; school buildings and apparatus; libraries and grounds used exclusively for school purposes, and buildings and grounds and materials used exclusively for public charity.

(fff) County scrip issued since the adoption of this constitution can not be made to bear interest by the treasurer's indorsement thereon, "Not paid for want of funds." *Jacks & Co. v. Turner*, 36—89.

(ggg) See *Lee Co. v. Abrahams*, 34—166; *Murphy v. State*, 38—514; *Peay v. City of Little Rock*, 32—31.

SEC. 6. All laws exempting property from taxation other than as provided in this constitution shall be void.

Exemption by statutory enactment void.

SEC. 7. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state may be a party.

Taxation of corporate property.

SEC. 8. The general assembly shall not have power to levy state taxes for any one year to exceed in the aggregate one per cent. of the assessed valuation of the property of the state for that year.

Maximum rate of state taxes.

SEC. 9. No county shall levy a tax to exceed one-half of one per cent. for all purposes, but may levy an additional one-half of one per cent. to pay indebtedness existing at the time of the ratification of this constitution (hhh).

Maximum rate of county taxes.

SEC. 10. The taxes of counties, towns and cities shall only be payable in lawful currency of the United States, or the orders or warrants of said counties, towns and cities respectively.

County and municipal taxes, in what payable.

SEC. 11. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same; and no moneys arising from a tax levied for one purpose shall be used for any other purpose.

Levy and specific appropriation of taxes.

SEC. 12. No money shall be paid out of the treasury until the same shall have been appropriated by law, and then only in accordance with said appropriation.

Disbursements.

SEC. 13. Any citizen of any county, city or town may institute suit in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever (iii).

Right of citizen to sue in behalf of inhabitants of county or municipality.

ARTICLE XVII.

RAILROADS, CANALS AND TURNPIKES.

SECTION 1. All railroads, canals and turnpikes shall be public highways, and all railroads and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other road, and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

Railroads, etc., public highways. Transportation companies common carriers. Right to construct railroads.

Intersection and connection of railroads.

(hhh) See note (zz) *ante*. This section creates a limitation upon the taxing power of the counties unless there be an exceptional case arising under prior contracts, and neither the legislature, nor the state courts, nor the federal courts, can direct or force a county to make a valid levy in excess of such limitation. *Graham v. Parham*, 32—676. See also *Lee Co. v. The State*, 36—281; *Cope Co., Judge, v. Collins*, 37—649.

(iii) By this section chancery has power to inquire into the validity of municipal exactions, and to enjoin their collection when found invalid; but to enjoin a city from prosecutions for violations of its ordinances is beyond its usual relief. *Taylor v. Pine Bluff* 34—663; *Oil Co. v. Little Rock*, 39—412.

Transportation companies to maintain office in state.
Transfers of stock.
Books.

SEC. 2. Every railroad, canal or turnpike corporation operated or partly operated in this state shall maintain one office therein, where transfers of its stock shall be made and where its books shall be kept for inspection by any stockholder or creditor of such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and the amounts owned by them respectively, the transfers of said stock and the names and places of residence of the officers.

Equal right to transportation.

SEC. 3. All individuals, associations and corporations shall have equal right to have persons and property transported over railroads, canals and turnpikes, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for transportation of freight or passengers within the state, or coming from or going to any other state. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates.

Regulation of charges.

Parallel or competing lines of transportation not to be consolidated or controlled by same parties.

SEC. 4. No railroad, canal or other corporation, or the lessees, purchasers or managers of any railroad, canal or corporation, shall consolidate the stock, property or franchises of such corporation with or lease or purchase the works or franchises of, or in any way control, any other railroad or canal corporation owning or having under its control a parallel or competing line, nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

Prohibitions upon officers, etc., of transportation companies.

SEC. 5. No president, director, officer, agent or employe of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of materials or supplies to such company or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company; nor in any arrangement which shall afford more advantageous terms or greater facilities than are offered or accorded to the public. And all contracts and arrangements in violation of this section shall be void.

Discrimination of charges between transportation companies and individuals prohibited.
Preferences in furnishing cars or motive power prohibited.

SEC. 6. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals or in favor of either by abatement, drawback or otherwise, and no railroad or canal company or any lessee, manager or employe thereof shall make any preferences in furnishing cars or motive power.

General assembly to prevent grant of free passes to officers of the state.

SEC. 7. The general assembly shall prevent by law the granting of free passes by any railroad or transportation company to any officer of this state, legislative, executive or judicial.

SEC. 8. The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same or pass any general or special law for the benefit of such corporation, except on condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

Conditions of remission of forfeiture of charter or legislation favorable to corporations.

SEC. 9. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals.

Eminent domain over property of corporations.

SEC. 10. The general assembly shall pass laws to correct abuses and prevent unjust discrimination and excessive charges by railroad, canal and turnpike companies for transporting freight and passengers, and shall provide for enforcing such laws by adequate penalties and forfeitures.

Legislation to prevent abuses by transportation companies.

SEC. 11. The rolling stock and all other movable property belonging to any railroad company or corporation in this state shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the general assembly shall pass no law exempting any such property from execution and sale.

Movable property of corporations personal property; Not to be exempted from taxation.

SEC. 12. All railroads which are now or may be hereafter built and operated, either in whole or in part, in this state shall be responsible for all damages to persons and property, under such regulations as may be prescribed by the general assembly.

Damages by railroads to persons and property.

SEC. 13. The directors of every railroad corporation shall annually make a report under oath to the auditor of public accounts of all of their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the general assembly shall pass laws enforcing by suitable penalties the provisions of this section.

Annual report of railroad companies to auditor.

ARTICLE XVIII.

JUDICIAL CIRCUITS.

Until otherwise provided by the general assembly, the judicial circuits shall be composed of the following counties:

Judicial circuits:

FIRST—Phillips, Lee, St. Francis, Prairie, Woodruff, White and Monroe. SECOND—Mississippi, Crittenden, Cross, Poinsett, Craighead, Greene, Clayton and Randolph. THIRD—Jackson, Independence, Lawrence, Sharp, Fulton, Izard, Stone and Baxter. FOURTH—Marion, Boone, Searcy, Newton, Madison, Carroll, Benton and Washington. FIFTH—Pope, Johnson, Franklin, Crawford, Sebastian, Sarber and Yell. SIXTH—Lonoke, Pulaski, Van Buren and Faulkner. SEVENTH—Grant, Hot Spring, Garland, Perry, Saline and Conway. EIGHTH—Scott, Montgomery, Polk, Howard, Sevier, Little River, Pike and Clark. NINTH—Hemp-

1st circuit.

2d circuit.

3d circuit.

4th circuit.

5th circuit.

6th circuit.

7th circuit.

8th circuit.

9th circuit.

stead, Lafayette, Nevada, Columbia, Union, Ouachita and Calhoun. TENTH—Chicot, Drew, Ashley, Bradley, Dorsey and Dallas. ELEVENTH—Desha, Arkansas, Lincoln and Jefferson.

10th circuit.

11th circuit.

Terms of circuit courts: Until otherwise provided by the general assembly, the circuit courts shall be begun and held in the several counties as follows:

First Circuit.

1st circuit. White—First Monday in February and August. Woodruff—Third Monday in February and August. Prairie—Second Monday after the third Monday in February and August. Monroe—Sixth Monday after the third Monday in February and August. St. Francis—Eighth Monday after the third Monday in February and August. Lee—Tenth Monday after the third Monday in February and August. Phillips—Twelfth Monday after the third Monday in February and August.

Second Circuit.

2d circuit. Mississippi—First Monday in March and September. Crittenden—Second Monday in March and September. Cross—Second Monday after the second Monday in March and September. Poinsett—Third Monday after the second Monday in March and September. Craighead—Fourth Monday after the second Monday in March and September. Greene—Sixth Monday after the second Monday in March and September. Clayton—Seventh Monday after the second Monday in March and September. Randolph—Ninth Monday after the second Monday in March and September.

Third Circuit.

3d circuit. Jackson—First Monday in March and September. Lawrence—Fourth Monday in March and September. Sharp—Second Monday after the fourth Monday in March and September. Fulton—Fourth Monday after the fourth Monday in March and September. Baxter—Sixth Monday after the fourth Monday in March and September. Izard—Seventh Monday after the fourth Monday in March and September. Stone—Ninth Monday after the fourth Monday in March and September. Independence—Tenth Monday after the fourth Monday in March and September.

Fourth Circuit.

4th circuit. Marion—Second Monday in February and August. Boone—Third Monday in February and August. Searcy—Second Monday after the third Monday in February and August. Newton—Third Monday after the third Monday in February and August. Carroll—Fourth Monday after the third Monday in February and August. Madison—Fifth Monday after the third Monday in February and August. Benton—Sixth Monday after the third Monday in February and August. Washington—Eighth Monday after the third Monday in February and August.

Fifth Circuit.

Greenwood District, Sebastian County—Third Monday in February and August. Fort Smith District, Sebastian County—First Monday after the fourth Monday in February and August. Crawford County—Fourth Monday after the fourth Monday in February and August. Franklin County—Sixth Monday after the fourth Monday in February and August. Sarber County—Eighth Monday after the fourth Monday in February and August. Yell County—Tenth Monday after the fourth Monday in February and August. Pope County—Twelfth Monday after the fourth Monday in February and August. Johnson County—Fourteenth Monday after the fourth Monday in February and August. 5th circuit.

Sixth Circuit.

In the County of Pulaski on the first Monday in February, and continue twelve weeks if the business of said court require it. In the County of Lonoke on the first Monday succeeding the Pulaski Court, and continue two weeks if the business of said court require it. In the County of Faulkner on the first Monday after the Lonoke Court, and continue two weeks if the business of said court require it. In the County of Van Buren on the first Monday after the Faulkner Court, and continue two weeks if the business of said court require it. 6th circuit.

Fall Term, Sixth Circuit.

In the County of Pulaski on the first Monday in October, and continue seven weeks if the business of said court require it. In the County of Lonoke on the first Monday next after the Pulaski Court, and continue two weeks if the business of said court require it. In the County of Faulkner on the first Monday after the Lonoke Court, and continue one week if the business of said court require it. In the County of Van Buren on the first Monday after the Faulkner Court, and continue one week if the business of said court require it. Fall term—6th circuit.

Seventh Circuit.

Hot Spring—Second Monday in March and September. Grant—Third Monday in March and September. Saline—Fourth Monday in March and September. Conway—Second Monday after fourth Monday in March and September. Perry—Fourth Monday after the fourth Monday in March and September. Garland—Fifth Monday after the fourth Monday in March and September. 7th circuit.

Eighth Circuit.

Montgomery—First Monday in February and August. Scott—First Monday after the first Monday in February and August. Polk—Second Monday after the first Monday in February and August. Sevier—Third Monday after the first Monday in February and August. Little River—Fifth Monday after the first 8th circuit.

Monday in February and August. Howard—Seventh Monday after the first Monday in February and August. Pike—Eighth Monday after the first Monday in February and August. Clark—Ninth Monday after the first Monday in February and August.

Ninth Circuit.

9th circuit.

Calhoun—First Monday in March and September. Union—Second Monday after the first Monday in March and September. Columbia—Fourth Monday after the first Monday in March and September. Lafayette—Sixth Monday after the first Monday in March and September. Hempstead—Eighth Monday after the first Monday in March and September. Nevada—Eleventh Monday after the first Monday in March and September. Ouachita—Thirteenth Monday after the first Monday in March and September.

Tenth Circuit.

10th circuit.

Dorsey—Third Monday in February and August. Dallas—First Monday in March and September. Bradley—Second Monday in March and September. Ashley—Third Monday in March and September. Drew—Second Monday after the third Monday in March and September. Chicot—Fourth Monday after the third Monday in March and September.

Eleventh Circuit.

11th circuit.

In the County of Desha on the first Monday in March and September. In the County of Arkansas on the fourth Monday in March and September. In the County of Lincoln on the third Monday after the fourth Monday in March and September. In the County of Jefferson on the sixth Monday after the fourth Monday in March and September.

ARTICLE XIX.

MISCELLANEOUS PROVISIONS.

Disqualifications
of atheists.

SECTION 1. No person who denies the being of a God shall hold any office in the civil departments of this state, nor be competent to testify as a witness in any court.

Duelling.

SEC. 2. No person who may hereafter fight a duel, assist in the same as second, or send, accept or knowingly carry a challenge therefor, shall hold any office in the state for a period of ten years, and may be otherwise punished as the law may prescribe.

Electors only
qualified for office.

SEC. 3. No person shall be elected to or appointed to fill a vacancy in any office who does not possess the qualifications of an elector.

Residence, etc.,
of officers.

SEC. 4. All civil officers for the state at large shall reside within the state, and all district, county and township officers within their respective districts, counties and townships, and

shall keep their offices at such places therein as are now or may hereafter be required by law.

SEC. 5. All officers shall continue in office after the expiration of their official terms until their successors are elected and qualified. Officers to continue in office till qualification of successors.

SEC. 6. No person shall hold or perform the duties of more than one office in the same department of the government at the same time, except as expressly directed or permitted by this constitution (jjj). Plurality of offices.

SEC. 7. Absence on business of the state or of the United States, or on a visit or on necessary private business, shall not cause a forfeiture of residence once obtained. Forfeiture of residence.

SEC. 8. It shall be the duty of the general assembly to regulate by law in what cases and what deductions from the salaries of public officers shall be made for neglect of duty in their official capacity. Deductions from salaries of officers.

SEC. 9. The general assembly shall have no power to create any permanent state office not expressly provided for by this constitution. Creation of additional permanent state offices prohibited.

SEC. 10. Returns for all elections for officers who are to be commissioned by the governor and for members of the general assembly, except as otherwise provided by this constitution, shall be made to the secretary of state. Returns of election; to whom made.

SEC. 11. The governor, secretary of state, auditor, treasurer, attorney-general, judges of the supreme court, judges of the circuit court, commissioner of state lands and prosecuting attorneys shall each receive a salary, to be established by law, which shall not be increased or diminished during their respective terms, nor shall any of them, except the prosecuting attorneys, after the adoption of this constitution, receive to his own use any fees, costs, perquisites of office or other compensation; and all fees that may hereafter be payable by law for any service performed by any officer mentioned in this section, except prosecuting attorneys, shall be paid in advance into the state treasury. Provided, that the salaries of the respective officers herein mentioned shall never exceed per annum: Salaries of state officers.

For governor the sum of \$4,000.00; for secretary of state the sum of \$2,500.00; for treasurer the sum of \$3,000.00; for auditor the sum of \$3,000.00; for attorney-general the sum of \$2,500.00; for commissioner of state lands the sum of \$2,500.00; for judges of the supreme court, each, the sum of \$4,000.00; for judges of the circuit courts and chancellors, each, the sum of \$3,000.00; for prosecuting attorney the sum of \$400.00. Fees pertaining to state offices.

And provided, further, that the general assembly shall provide for no increase of salaries of its members which shall take effect before the meeting of the next general assembly. Maximum salaries of state officers.

(jjj) See note (r) to section 2, article IV. See also section 26 of this article.

Publication of receipts and expenditures of public money.

SEC. 12. An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom and on what account, shall, from time to time, be published as may be prescribed by law.

Usury.

SEC. 13. All contracts for a greater rate of interest than ten per centum per annum shall be void, as to principal and interest, and the general assembly shall prohibit the same by law; but when no rate of interest is agreed upon the rate shall be six per centum per annum.

Lotteries prohibited.

SEC. 14. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

Contracts for stationery, fuel, printing, furniture, etc., for state government.

SEC. 15. All stationery, printing, paper, fuel, for the use of the general assembly and other departments of government, shall be furnished, and the printing, binding and distributing of the laws, journals, department reports and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the general assembly and its committees, shall be performed under contract to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall in any way be interested in such contracts, and all such contracts shall be subject to the approval of the governor, auditor and treasurer.

Contracts for public buildings, bridges, etc.

For care of paupers.

SEC. 16. All contracts for erecting or repairing public buildings or bridges in any county, or for materials therefor, or for providing for the care and keeping of paupers where there are no alms-houses, shall be given to the lowest responsible bidder under such regulations as may be provided by law.

Revision, publication, etc., of laws.

SEC. 17. The laws of this state, civil and criminal, shall be revised, digested, arranged, published and promulgated at such times and in such manner as the general assembly may direct.

Security of miners and travelers.

SEC. 18. The general assembly by suitable enactments shall require such appliances and means to be provided and used as may be necessary to secure as far as possible the lives, health and safety of persons employed in mining and of persons traveling upon railroads and by other public conveyances, and shall provide for enforcing such enactments by adequate pains and penalties.

Education of deaf and dumb, blind and insane.

SEC. 19. It shall be the duty of the general assembly to provide by law for the support of institutions for the education of the deaf and dumb and of the blind, and also for the treatment of the insane.

Oath of office.

SEC. 20. Senators and representatives and all judicial and executive, state and county officers, and all other officers, both civil and military, before entering on the duties of their respective offices shall take and subscribe to the following oath or affirmation: "I, ———, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the

State of Arkansas, and that I will faithfully discharge the duties of the office of ———, upon which I am now about to enter."

SEC. 21. The sureties upon the official bonds of all state officers shall be residents of and have sufficient property within the state not exempt from sale under execution, attachment or other process of any court to make good their bonds; and the sureties upon the official bonds of all county officers shall reside within the counties where such officers reside, and shall have sufficient property therein not exempt from such sale to make good their bonds (kkk).

Sureties upon official bonds.

SEC. 22. Either branch of the general assembly at a regular session thereof may propose amendments to this constitution, and, if the same be agreed to by a majority of all the members elected to each house, such proposed amendments shall be entered on the journals with the yeas and nays, and published in at least one newspaper in each county, where a newspaper is published, for six months immediately preceding the next general election for senators and representatives, at which time the same shall be submitted to the electors of the state for approval or rejection; and if a majority of the electors voting at such election adopt such amendments the same shall become a part of this constitution; but no more than three amendments shall be proposed or submitted at the same time. They shall be so submitted as to enable the electors to vote on each amendment separately.

Amendments to constitution, how originated.

To be published;

And submitted to the people.

Not more than three to be proposed or submitted at same time. Separate ratification of each.

SEC. 23. No officer of this state, nor of any county, city or town shall receive, directly or indirectly, for salary, fees and perquisites more than five thousand dollars net profits per annum in par funds, and any and all sums in excess of this amount shall be paid into the state, county, city or town treasury as shall hereafter be directed by appropriate legislation.

Maximum of officers' salary and fees.

Disposition of excess received.

SEC. 24. The general assembly shall provide by law the mode of contesting elections in cases not specifically provided for in this constitution.

Contested elections not herein specifically provided for.

SEC. 25. The present seal of the state shall be and remain the seal of the state of Arkansas until otherwise provided by law, and shall be kept and used as provided in this constitution.

Seal of the state.

SEC. 26. Militia officers, officers of the public schools and notaries may be elected to fill any executive or judicial office.

Officers eligible to executive and judicial office.

SEC. 27. Nothing in this constitution shall be so construed as to prohibit the general assembly from authorizing assessments on real property for local improvements in towns and cities under such regulations as may be prescribed by law, to be based upon the consent of a majority in value of the property holders owning property adjoining the locality to be affected; but such assessments shall be *ad valorem* and uniform (lll).

Assessments on real property for local improvements in towns and cities.

(kkk) See *Hyner v. Dickinson*, 32—776; *Oliver v. Martin*, 36—142.

(lll) See *Pcay v. City of Little Rock*, 32—31.

SCHEDULE.

Retention of existing laws.

Effect of exemption laws in force at adoption of constitution of 1868.

Distinction between sealed and unsealed instruments.

Competency of witnesses.

First general election for officers and election for submission of constitution to the people.

SECTION 1. All laws now in force which are not in conflict or inconsistent with this constitution shall continue in force until amended or repealed by the general assembly, and all laws exempting property from sale on execution or by decree of a court which were in force at the time of the adoption of the constitution of 1868 shall remain in force with regard to contracts made before that time. Until otherwise provided by law, no distinction shall exist between sealed and unsealed instruments concerning contracts between individuals executed since the adoption of the constitution of 1868, provided that the statutes of limitation with regard to sealed and unsealed instruments in force at that time continue to apply to all instruments afterward executed until altered or repealed (mmm).

SEC. 2. In civil actions no witness shall be excluded because he is a party to the suit or interested in the issue to be tried (nnn). Provided, that in actions by or against executors, administrators or guardians in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transactions with or statements of the testator, intestate or ward, unless called to testify thereto by the opposite party (ooo). Provided, further, that this section may be amended or repealed by the general assembly.

SEC. 3. An election shall be held at the several election precincts of every county of the state on Tuesday, the 13th day of October, 1874, for governor, secretary of state, auditor, treasurer, attorney-general, commissioner of state lands for two years, unless the office is sooner abolished by the general assembly, chancellor and clerk of the separate chancery court of Pulaski County, chief justice and two associate justices of the supreme court, a circuit judge and prosecuting attorney for each judicial circuit provided for in this constitution, senators and representatives to the general assembly, all county and township officers

(mmm) This section continues in force, subject to legislation, the provision of the constitution of 1868 abolishing private seals, but limits its application to instruments executed after the adoption of that constitution. It also renews the application of the statute of limitations of ten years (existing at the date of the adoption of the constitution of 1868) to sealed instruments executed after that date, and not barred by the limitation applicable to unsealed instruments when this constitution was adopted. *Dyer v. Gill*, 32—410. See also *Shinn v. Tucker*, 33—421.

As to first and second clauses of this section, see note (nn) to sec. 28, art. VII; note (uu) to sec. 3, art. IX, and *Worthen v. Roots*, 34—363.

(nnn) Husband and wife are still incompetent to testify for or against each other. *Collins v. Mack*, 31—684; *Watkins v. Turner*, 34—663. But a married woman interpleading for property seized as her husband's in an action of replevin against him is a competent witness for herself on the trial of the interplea. *Berlin v. Cantrell*, 33—611. And in an action against husband and wife to foreclose a mortgage on a homestead, the wife may defend to avoid foreclosure of dower, and as to this may testify for herself, but not in aid of the defense of her husband. *Klenk v. Noble and wife*, 37—238.

The evidence of the parties in a suit for divorce is admissible, but will not sustain a decree unless corroborated. *Brown v. Brown*, 38—324; *Kurtz v. Kurtz*, *Id.*, 119.

(ooo) See *Giles v. Wright*, 26—476; *Bozeman v. Browning*, 31—364; *Wassell v. Armstrong*, 35—247; *Bird v. Jones*, 37—195.

provided for in this constitution; and also for the submission of this constitution to the qualified electors of the state for its adoption or rejection.

SEC. 4. The qualification of voters at the election to be held as provided in this schedule shall be the same as is now prescribed by law.

Qualifications of voters thereat.

SEC. 5. The state board of supervisors hereinafter mentioned shall give notice of said election immediately after the adoption of this constitution by this convention by proclamation in at least two newspapers published at Little Rock and such other newspapers as they may select. And each county board of supervisors shall give public notice in their respective counties of said election immediately after their appointment.

Notice thereof.

SEC. 6. The governor shall also issue a proclamation enjoining upon all peace officers the duty of preserving good order on the day of said election and preventing any disturbance of the same.

Governor's proclamation enjoining good order at such election.

SEC. 7. Augustus H. Garland, Gordon N. Peay and Dudley E. Jones are hereby constituted a state board of supervisors of said election, who shall take an oath faithfully and impartially to discharge the duties of their office, a majority of whom shall be a quorum, and who shall perform the duties herein assigned them. Should a vacancy occur in said board by refusal to serve, death, removal, resignation or otherwise, or if any member should become incapacitated from performing said duties, the remaining members of the board shall fill the vacancy by appointment. But, if all the places on said board become vacant at the same time, the said vacancies shall be filled by the president of this convention.

State board of supervisors of election.

Vacancies therein.

SEC. 8. Said state board shall at once proceed to appoint a board of election supervisors for each county of this state, consisting of three men of known intelligence and uprightness of character, who shall take the same oath as above provided for the state board. A majority of each board shall constitute a quorum and shall perform the duties herein assigned to them; and vacancies occurring in the county boards shall be filled by the state board.

County boards of supervisors of election.

Vacancies therein.

SEC. 9. The state board shall provide the form of poll-books, and each county board shall furnish the judges of each election precinct with three copies of the poll-books in the form prescribed and with ballot-boxes at the expense of the county.

Poll-books and ballot-boxes for the election.

SEC. 10. The state board of supervisors shall cause to be furnished in pamphlet form a sufficient number of copies of this constitution to supply each county supervisor and judge of election with a copy, and shall forward the same to the county election boards for distribution.

Distribution to officers of the election of copies of the constitution.

SEC. 11. The boards of county election supervisors shall at once proceed to appoint three judges of election for each election precinct in their respective counties, and the judges shall appoint three election clerks for their respective precincts, all of whom shall be good, competent men, and take an oath as prescribed

Judges of the election and election clerks.

Case of absence of judges of the election from the polls.	above. Should the judges of any election precinct fail to attend at the time and place provided by law or decline to act, the assembled electors shall choose competent persons in the manner provided by law to act in their place, who shall be sworn as above.
Conduct of the election. Qualifications of voters, how decided.	SEC. 12. Said election shall be conducted in accordance with existing laws, except as herein provided. As the electors present themselves at the polls to vote the judges of the election shall pass upon their qualifications and the clerks of the election shall register their names on the poll-books if qualified; and such registration by said clerks shall be a sufficient registration in conformity with the constitution of this state, and then their votes shall be taken.
Registration.	
Style of ballot.	SEC. 13. Each elector shall have written or printed on his ticket "For Constitution" or "Against Constitution," and also the offices and the names of the candidates for the offices for whom he desires to vote.
Deposit of tickets. Election to vote only in township or ward of residence. Numbering of tickets.	SEC. 14. The judges shall deposit the tickets in the ballot-box; but no elector shall vote outside of the township or ward in which he resides. The names of the electors shall be numbered, and the corresponding numbers shall be placed on the ballots by the judges when deposited.
Drinking houses to be closed on day of the election. Sale or gift of intoxicating liquor prohibited.	SEC. 15. All dram shops and drinking houses in this state shall be closed during the day of said election and the succeeding night, and any person selling or giving away intoxicating liquors during said day or night shall be punished by fine not less than two hundred dollars for each and every offense, or imprisoned not less than six months, or both.
Hours of voting. Counting of ballots.	SEC. 16. The polls shall be opened at eight o'clock in the forenoon and shall be kept open until sunset. After the polls are closed the ballots shall be counted by the judges at the place of voting as soon as the polls are closed, unless prevented by violence or accident, and the results by them certified on the poll-books and the ballots sealed up. They shall be returned to the county board of election supervisors, who shall proceed to cast up the votes and ascertain and state the number of votes cast for the constitution and the number cast against the constitution, and also the number of votes cast for each candidate voted for for any office, and shall forthwith forward to the state board of supervisors, duly certified by them, one copy of the statement or abstracts of the votes so made out by them, retain one copy in their possession and file one copy in the office of the county clerk, where they shall also deposit for safe-keeping the ballots, sealed up, and one copy of the poll-books, retaining possession of the other copies.
Disposition of returns.	
Copies of abstract of returns, ballots and poll-books, where filed.	
Ascertainment and publication of result of election on adoption of constitution.	SEC. 17. The state board of supervisors shall at once proceed, on receiving such returns from the county board, to ascertain therefrom and state the whole number of votes given for the constitution and the whole number given against it, and if a majority of all votes cast be in favor of the constitution they shall at once make public that fact by publication in two or more of the leading newspapers published in the City of Little Rock, and this consti-

tution, from that date, shall be in force; and they shall also make out and file in the office of the secretary of state an abstract of all the votes cast for the constitution and all the votes cast against it, and also an abstract of all votes cast for every candidate voted for at the election, and file the same in the office of the secretary of state, showing the candidates elected. They shall also make out and certify and lay before each house of the general assembly a list of the members elected to that house, and shall also make out, certify and deliver to the speaker of the house of representatives an abstract of all votes cast at the election for any and all persons for the office of governor, secretary of state, treasurer of state, auditor of state, attorney-general and commissioner of state lands, and the said speaker shall cast up the votes and announce the names of the persons elected to these offices. The governor, secretary of state, treasurer of state, auditor of state, attorney-general and commissioner of state lands chosen at said election shall qualify and enter upon the discharge of the duties of their respective offices within fifteen days after the announcement of their election as aforesaid.

SEC. 18. All officers shown to be elected by the abstract of said election filed by the state board of supervisors in the office of the secretary of state, required by this constitution to be commissioned, shall be commissioned by the governor.

SEC. 19. At said election the qualified voters of each county and senatorial district, as defined in article eight of this constitution, shall elect respectively representatives and senators according to the numbers and apportionment contained in said article. The board of election supervisors of each county shall furnish certificates of election to the person or persons elected to the house of representatives as soon as practicable after the result of the election has been ascertained, and such board of election supervisors in each county shall make a correct return of the election for senator or senators to the board of election supervisors of the county first named in the senatorial apportionment, and said board shall furnish certificates of election to the person or persons elected as senator or senators in said senatorial district as soon as practicable.

SEC. 20. All officers elected under this constitution, except the governor, secretary of state, auditor of state, treasurer, attorney-general and commissioner of state lands, shall enter upon the duties of their several offices when they shall have been declared duly elected by said state board of supervisors and shall have duly qualified. All such officers shall qualify and enter upon the duties of their offices within fifteen days after they have been duly notified of their election.

SEC. 21. Upon the qualification of the officers elected at said election the present incumbents of the offices for which the election is held shall vacate the same and turn over to the officers thus elected and qualified all books, papers, records, moneys and documents belonging or pertaining to said offices by them respectively held.

Constitution, if adopted, in force from date of such publication. Abstract of returns of the election to be filed with secretary of state.

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State officers elected, when to enter upon their duties.

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First election of representatives and senators.

Their certificates of election.

Officers elected other than state officers, when to enter upon their duties.

Prior incumbents to vacate their offices.

Time of conven-
ing of first ses-
sion of general
assembly.

SEC. 22. The first session of the general assembly under this constitution shall commence on the first Tuesday after the second Monday in November, 1874.

Transfer of ju-
risdiction from
boards of super-
visors to county
courts;
From criminal
courts to circuit
courts;

SEC. 23. The county courts provided for in this constitution shall be regarded in law as a continuation of the boards of supervisors now existing by law, and the circuit courts shall be regarded in law as continuations of the criminal courts wherever the same may have existed in their respective counties, and the probate courts shall be regarded as continuations of the circuit courts for the business within the jurisdiction of such probate courts, and the papers and records pertaining to said courts and jurisdictions shall be transferred accordingly; and no suit or prosecution of any kind shall abate because of any change made in this constitution.

And of probate
business to pro-
bate courts.

Present incum-
bents to continue
in office till qual-
ification of suc-
cessors.

SEC. 24. All officers now in office whose offices are not abolished by this convention shall continue in office and discharge the duties imposed on them by law until their successors are elected and qualified under this constitution. The office of commissioner of state lands shall be continued, provided that the general assembly at its next session may abolish or continue the same in such manner as may be prescribed by law.

Commissioner of
state lands.

Penalty of fraud
by officers of the
election;

SEC. 25. Any election officer appointed under the provisions of this schedule who shall fraudulently and corruptly permit any person to vote illegally, or refuse the vote of any qualified elector, cast up or make a false return of said election, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary not less than five years nor more than ten years. And any person who shall vote when not a qualified elector, or vote more than once, or bribe any one to vote contrary to his wishes, or intimidate or prevent any elector by threats, menace or promises from voting, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years.

Or other persons.

Tenure of office
of officers chosen
at the election.

SEC. 26. All officers elected at the election provided for in this schedule shall hold their offices for the respective periods provided for in the foregoing constitution, and until their successors are elected and qualified. The first general elections after the ratification of this constitution shall be held on the first Monday of September, A. D. 1876. Nothing in this constitution and the schedule thereto shall be so construed as to prevent the election of congressmen at the time as now prescribed by law.

Time of next gen-
eral election.

Election of con-
gressmen.

Appropriation to
defray expenses
of the election.

SEC. 27. The sum of five thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated to defray the expenses of the election provided for in this schedule, and the auditor of state shall draw his warrant on the treasurer for such expenses not exceeding said amount on the certificate of the state board of supervisors of election.

Present salaries
of state officers.

SEC. 28. For the period of two years from the adoption of this constitution, and until otherwise provided by law, the respective officers herein enumerated shall receive for their services the following salaries per annum:

For governor the sum of \$3,500.00; for secretary of state the sum of \$2,000.00; for treasurer the sum of \$2,500.00; for auditor the sum of \$2,500.00; for attorney-general the sum of \$2,000.00; for commissioner of state lands the sum of \$2,000.00; for judges of the supreme court, each, the sum of \$3,500.00; for judges of circuit and chancery courts, each, the sum of \$2,500.00; for prosecuting attorneys, each, the sum of \$400.00; for members of the general assembly the sum of \$6.00 per day and twenty cents per mile for each mile traveled in going to and returning from the seat of government over the most direct and practicable route.

Per diem and mileage of members of general assembly.

Done in convention at Little Rock the seventh day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

IN WITNESS WHEREOF, we have hereunto subscribed our names.

GRANDISON D. ROYSTON,
President of the Convention, and
Delegate from the County of Hempstead.

THOMAS W. NEWTON,
Secretary.

A. M. RODGERS, Delegate from Benton County.
HORACE H. PATTERSON, Delegate from Benton County.
W. W. BAILY, Delegate from Boone County.
JNO. R. HAMPTON, Delegate from Bradley County.
JOHN W. CYPERT, Delegate from Baxter County.
BRADLEY BUNCH, Delegate from Carroll County.
JESSE A. ROSS, Delegate from Clark County.
H. F. THOMASON, Delegate from Crawford County.
W. D. LEIPER, Delegate from Dallas County.
WM. J. THOMPSON, Delegate from Woodruff County.
JAMES A. GIBSON, Delegate from Arkansas County.
HENRY W. CARTER, Delegate from Pike County.
DANIEL F. REINHARDT, Delegate from Prairie County.
ELIJAH MOSELEY, Delegate from Ouachita County.
STEPHEN C. BATES, Delegate from Polk County.
G. P. SMOOTE, Delegate from Columbia County.
D. L. KILLGORE, Delegate from Columbia County.
WILLIAM S. HANNA, Delegate from Conway County.
JOHN S. ANDERSON, Delegate from Craighead County.
J. G. FRIERSON, Delegate from Cross County.
E. FOSTER BROWN, Delegate from Clayton County.
JAS. P. STANLEY, Delegate from Drew County.
JOHN NIVEN, Delegate from Dorsey County.
WILLIAM W. MANSFIELD, Delegate from the County of Franklin.
JOHN DUNAWAY, Delegate from the County of Faulkner.
DAVIDSON D. CUNNINGHAM, Delegate from the County of Grant.
BEN. H. CROWLY, Delegate from the County of Greene.
H. M. RECTOR, Delegate from Garland County.
JOHN R. EAKIN, Delegate from Hempstead County.

W. C. KELLY, Delegate from Hot Spring County.
J. W. BUTLER, Delegate from Independence County.
JAMES RUTHERFORD, Delegate from Independence County.
RANSOM GULLEY, Delegate from Izard County.
FRANKLIN DOSWELL, Delegate from Jackson County.
JNO. A. WILLIAMS, Delegate from Jefferson County.
SETH J. HOWELL, Delegate from Johnson County.
PHILIP K. LESTER, Delegate from Lawrence County.
J. H. WILLIAMS, Delegate from Little River County.
J. P. EAGLE, Delegate from Lonoke County.
REASON G. PUNTNEY, Delegate from Lincoln County.
MONROE ANDERSON, Delegate from Lee County.
JOHN CARROLL, Delegate from Madison County.
S. P. HUGHES, Delegate from Monroe County.
NICHOLAS W. CABLE, Delegate from Montgomery County.
CHARLES BOWEN, Delegate from Mississippi County.
R. K. GARLAND, Delegate from Nevada County.
HENRY G. BUNN, Delegate from Ouachita County.
W. H. BLACKWELL, Delegate from Perry County.
JNO. J. HORNOR, Delegate from Phillips County.
JNO. R. HOMER SCOTT, Delegate from the County of Pope.
JOHN MILLER, JR., Delegate from the County of Randolph.
SIDNEY M. BARNES, Delegate from the County of Pulaski.
JABEZ M. SMITH, Delegate from Saline County.
BEN. B. CHISM, Delegate from the County of Sarber.
J. W. SORRELS, Delegate from Scott County.
W. S. LINDSEY, Delegate from Searcy County.
R. P. PULLIAM, Delegate from Sebastian County.
W. M. FISHBACK, Delegate from Sebastian County.
B. H. KINSWORTHY, Delegate from Sevier County.
LEWIS WILLIAMS, Delegate from Sharp County.
JOHN M. PARROTT, Delegate from Saint Francis County.
WALTER J. CAGLE, Delegate from Stone County.
HORATIO G. P. WILLIAMS, Delegate from Union County.
ROBT. GOODWIN, Delegate from Union County.
A. R. WITT, Delegate from Van Buren County.
R. P. POLK, Delegate from Phillips County.
T. W. THOMASON, Delegate from Washington County.
BENJAMIN F. WALKER, Delegate from Washington County.
M. F. LAKE, Delegate from Washington County.
JESSE N. CYPERT, Delegate from White County.
J. W. HOUSE, Delegate from White County.
JOSEPH T. HARRISON, Delegate from Yell County.
MARCUS L. HAWKINS, Delegate from Ashley County.
EDWIN R. LUCAS, Delegate from Fulton County.
BENJAMIN W. JOHNSON, Delegate from Calhoun County.
RODERICK JOYNER, Delegate from Poinsett County.

PROCLAMATION

BY THE

STATE BOARD OF ELECTION SUPERVISORS.*

OFFICE OF STATE BOARD OF ELECTION SUPERVISORS, }
LITTLE ROCK, ARK., October 30, 1874. }

In pursuance of the provisions of section seventeen of the schedule to the constitution recently framed for the State of Arkansas, the undersigned do hereby proclaim and make known that at a general election held on the thirteenth day of October, A. D. 1874, the following votes were cast "For" and "Against" said constitution in the several counties of said state, as appears by the official returns made to said board by the county boards of election supervisors, to-wit:-

COUNTIES.	For Constitution..	Against Constitution..	Majorities for Constitution..	Majorities against Constitution..	COUNTIES.	For Constitution..	Against Constitution..	Majorities for Constitution..	Majorities against Constitution..
Arkansas.....	1211	430	781	.....	Lee.....	1760	2	1758	.....
Ashley.....	1147	320	827	.....	Lonoke.....	1500	83	1417	.....
Benton.....	1954	79	1875	.....	Lincoln.....	886	948	.....	62
Beebe.....	1374	65	1309	.....	Madison.....	1143	111	1032	.....
Bell.....	762	65	697	.....	Marion.....	683	19	664	.....
Baxter.....	569	45	524	.....	Mississippi.....	936	26	910	.....
Calhoun.....	594	11	583	.....	Monroe.....	985	744	241	.....
Carroll.....	1011	6	1005	.....	Montgomery.....	594	24	570	.....
Chester.....	417	1311	.....	894	Newton.....	402	157	245	.....
Clark.....	1438	662	776	.....	Nevada.....	1198	211	987	.....
Columbia.....	1376	369	1007	.....	Osage.....	1101	925	176	.....
Conway.....	888	341	547	.....	Perry.....	323	113	210	.....
Crawford.....	1444	209	1235	.....	Phillips.....	1958	2184	.....	226
Crittenden.....	426	954	.....	528	Pike.....	400	134	266	.....
Craighead.....	858	6	852	.....	Poinsett.....	329	3	326	.....
Cross.....	701	220	481	.....	Polk.....	467	49	418	.....
Clayton.....	746	11	735	.....	Pope.....	1317	25	1292	.....
Dallas.....	682	195	487	.....	Prairie.....	911	368	543	.....
Desh.....	425	802	.....	377	Pulaski.....	3054	2135	919	.....
Drew.....	1233	661	572	.....	Randolph.....	1246	.....	1246	.....
Isotsey.....	920	210	710	.....	St. Francis.....	1102	478	624	.....
Franklin.....	1377	181	1196	.....	Saline.....	1019	.....	1019	.....
Fulton.....	535	.....	535	.....	Scott.....	1083	89	994	.....
Faulkner.....	1216	65	1151	.....	Stone.....	655	7	648	.....
Grant.....	631	51	580	.....	Searcy.....	518	104	414	.....
Greene.....	953	.....	953	.....	Sharp.....	945	28	917	.....
Garland.....	1046	82	964	.....	Sevier.....	689	80	609	.....
Howard.....	798	315	483	.....	Sebastian.....	1742	606	1136	.....
Hempstead.....	1676	677	999	.....	Sarber.....	1192	183	1009	.....
Hot Spring.....	529	110	420	.....	Union.....	1322	744	578	.....
Independence.....	2023	349	1674	.....	Van Buren.....	976	46	930	.....
Izard.....	1229	36	1193	.....	Washington.....	2200	234	1966	.....
Jackson.....	1743	45	1698	.....	White.....	2377	58	2319	.....
Jefferson.....	1052	286	.....	1738	Woodruff.....	1260	395	865	.....
Johnson.....	1284	99	1185	.....	Yell.....	1430	236	1194	.....
Lacayette.....	1070	1045	25	.....					
Lawrence.....	1176	3	1173	.....					
Little River.....	470	423	47	.....					
					Total.....	78697	24807		

Total vote "For Constitution" 78,697

Total vote "Against Constitution" 24,807

Majority "For Constitution" 53,890

Given under our hands this thirtieth day of October, 1874.

U. M. ROSE,

DUDLEY E. JONES,

GORDON N. PEAY,

State Board Election Supervisors.

(*) Appointed by sec. 7 of the Schedule to the Constitution.

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THE
CONSTITUTION
OF THE
STATE OF ARKANSAS

OF

1836.

STANDARD LIBRARY

THE
CONSTITUTION
OF THE
STATE OF ARKANSAS
OF 1836.

We, the people of the Territory of Arkansas, by our representatives, in convention assembled, at Little Rock, on Monday, the fourth day of January, A. D. 1836, and of the independence of the United States the sixtieth year, having the right of admission into the union as one of the United States of America, consistent with the federal constitution, and by virtue of the treaty of cession by France to the United States of the Province of Louisiana, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free and independent state, by the name and style of "*The State of Arkansas*," and do ordain and establish the following constitution for the government thereof:

ARTICLE I.

OF BOUNDARIES.

We do declare and establish, ratify and confirm the following as the permanent boundaries of said State of Arkansas, that is to say: Beginning in the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude; running from thence west with the said parallel of latitude to the St. Francis River; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the south-west corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red River, as by acts of congress and treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the Mexican boundary line to the north-west corner of the State of Louisiana; thence east with the Louisiana state line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river to the thirty-sixth degree of north latitude, the point of beginning.

ARTICLE II.

DECLARATION OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE:

SECTION 1. That all free men, when they form a social compact, are equal and have certain inherent and indefeasible rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

SEC. 2. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have, at all times, an unqualified right to alter, reform or abolish their government in such manner as they may think proper.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, and no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; that no human authority can, in any case whatever, interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

SEC. 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

SEC. 5. That all elections shall be free and equal.

SEC. 6. That the right of trial by jury shall remain inviolate.

SEC. 7. That printing presses shall be free to every person, and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

SEC. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels the jury shall have the right to determine the law and the facts.

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and that general warrants, whereby any officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named whose offenses are not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

SEC. 10. That no free man shall be taken or imprisoned, or dis seized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

SEC. 11. That in all criminal prosecutions the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment a speedy public trial by an impartial jury of the county or district in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

SEC. 12. That no person shall, for the same offense, be twice put in jeopardy of life or limb.

SEC. 13. That all penalties shall be reasonable and proportioned to the nature of the offense.

SEC. 14. That no man shall be put to answer any criminal charge but by presentment, indictment or impeachment.

SEC. 15. That no conviction shall work corruption of blood or forfeiture of estate.

SEC. 16. That all prisoners shall be bailable by sufficient securities, unless in capital offenses where the proof is evident or the presumption great. And the privilege of the writ of *habeas corpus* shall not be suspended unless where, in case of rebellion or invasion, the public safety may require it.

SEC. 17. That excessive bail shall in no case be required nor excessive fines imposed.

SEC. 18. That no *ex post facto* law, or law impairing the obligation of contracts, shall ever be made.

SEC. 19. That perpetuities and monopolies are contrary to the genius of a republic and shall not be allowed, nor shall any hereditary emolument, privileges or honors ever be granted or conferred in this state.

SEC. 20. That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives and to apply to those invested with the power of the government for redress of grievances or other proper purposes by address or remonstrance.

SEC. 21. That the free white men of this state shall have a right to keep and to bear arms for their common defense.

SEC. 22. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

SEC. 23. The military shall be kept in strict subordination to the civil power.

SEC. 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and, to guard against any encroachments on the rights herein retained or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III.

OF DEPARTMENTS.

SECTION 1. The powers of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit: Those which are legislative to one, those which are executive to another and those which are judicial to another.

SEC. 2. No person or collection of persons, being of one of those departments, shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be vested in a general assembly, which shall consist of a senate and a house of representatives.

QUALIFICATION OF ELECTORS.

SEC. 2. Every free white male citizen of the United States who shall have attained the age of twenty-one years and who shall have been a citizen of this state six months shall be deemed a qualified elector, and be entitled to vote in the county or district where he actually resides for each and every office made elective under this state or under the United States. Provided, that no soldier, seaman or marine in the army or navy of the United States shall be entitled to vote at any election within this state.

TIME OF CHOOSING REPRESENTATIVES.

SEC. 3. The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

QUALIFICATION OF A REPRESENTATIVE.

SEC. 4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-five years, who shall not be a free white male citizen of the United States, who shall not have been an inhabitant of this state one year, and who shall not at the time of his election have an actual residence in the county he may be chosen to represent.

QUALIFICATION OF A SENATOR.

SEC. 5. The senate shall consist of members to be chosen every four years by the qualified electors of the several districts.

SEC. 6. No person shall be a senator who shall not have attained the age of thirty years, who shall not be a free white male citizen of the United States, who shall not have been an inhabitant of this state one year, and who shall not at the time of his election have an actual residence in the district he may be chosen to represent.

MEETING OF THE GENERAL ASSEMBLY.

SEC. 7. The general assembly shall meet every two years, on the first Monday of November, at the seat of government, until altered by law.

MODE OF ELECTION AND TIME, AND PRIVILEGE OF ELECTORS.

SEC. 8. All general elections shall be *viva voce* until otherwise directed by law, and shall commence and be holden every two years on the first Monday in October until altered by law, and the electors, in all cases except in cases of treason, felony and breach of the peace, shall be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

DUTY OF GOVERNOR.

SEC. 9. The governor shall issue writs of election to fill such vacancies as shall occur in either house of the general assembly.

SEC. 10. No judge of the supreme, circuit or inferior courts of law or equity, secretary of state, attorney for the state, state auditor or treasurer, register or recorder, clerk of any court of record, sheriff, coroner, member of congress, nor any other person holding any lucrative office under the United States or this state (militia officers, justices of the peace, postmasters and judges of the county court excepted), shall be eligible to a seat in either house of the general assembly.

SEC. 11. No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the general assembly, nor to any office of profit or trust, until he shall have accounted for and paid over all sums for which he may have been liable.

SEC. 12. The general assembly shall exclude from every office of trust or profit, and from the right of suffrage within this state, all persons convicted of bribery, perjury or other infamous crime.

SEC. 13. Every person who shall have been convicted of directly or indirectly giving or offering any bribe to procure his election or appointment shall be disqualified from holding any office of trust or profit under this state; and any person who shall give or offer any bribe to procure the election or appointment of any person shall, on conviction thereof, be disqualified from being an elector or from holding office of trust or profit under this state.

SEC. 14. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this state which shall have been created or the emoluments of which shall have been increased during his continuance of office, except to such office as shall be filled by the election of the people.

SEC. 15. Each house shall appoint its own officers, and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house shall provide.

SEC. 16. Each house may determine the rule of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled the second time for the same offense. They shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays upon any question shall be entered on the journal at the desire of any five members.

SEC. 17. The door of each house when in session, or in committee of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment any person not a member who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence during their session; but such imprisonment shall not extend beyond the final adjournment of that session.

SEC. 18. Bills may originate in either house and be amended or rejected by the other, and every bill shall be read on three different days in each house, unless two-thirds of the house where the same is pending shall dispense with the rules; and every bill having passed both houses shall be signed by the president of the senate and the speaker of the house of representatives.

SEC. 19. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house, of the general assembly, the vote shall be taken *viva voce* and entered on the journal.

SEC. 20. The senators and representatives shall in all cases except treason, felony or breach of the peace be privileged from arrest during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session; and for any speech or debate in either house they shall not be questioned in any other place.

SEC. 21. The members of the general assembly shall severally receive from the public treasury compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

MANNER OF BRINGING SUITS AGAINST THE STATE.

SEC. 22. The general assembly shall direct by law in what courts and in what manner suits may be commenced against the state.

SEC. 23. They shall have power to pass all laws that are necessary to prohibit the introduction into this state of any slave or slaves who may have committed any high crime in any other state or territory.

SEC. 24. The general assembly shall not have power to pass any bill of divorce, but may prescribe by law the manner in which such cases shall be investigated in the courts of justice and divorces granted.

SEC. 25. The general assembly shall have power to prohibit the introduction of any slave or slaves for the purpose of speculation or as an article of trade or merchandise; to oblige the owner of any slave or slaves to treat them with humanity; and in the prosecution of slaves for any crime they shall not be deprived of an impartial jury; and any slave who shall be convicted of a capital offense shall suffer the same degree of punishment as would be inflicted on a free white person, and no other; and courts of justice before whom slaves shall be tried shall assign them counsel for their defense.

SEC. 26. The governor, secretary of state, auditor, treasurer and all the judges of the supreme, circuit and inferior courts of law and equity, and the prosecuting attorneys for the state shall be liable to impeachment for any malpractice or misdemeanor in office; but judgment in such cases shall not extend farther than removal from office and disqualification to hold any office of honor, trust or profit under this state. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished according to law.

SEC. 27. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate; and when sitting for that purpose the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried the chief justice of the supreme court shall preside, and no person shall be convicted without the concurrence of two-thirds of all the senators elected; and for reasonable cause, which shall not be sufficient ground of impeachment, the governor shall, on the joint address of two-thirds of each branch of the legislature, remove from office the judges of supreme and inferior courts. Provided, the cause or causes of removal be spread on the journals, and the party charged be notified of the same, and heard by himself and counsel before the vote is finally taken and decided.

SEC. 28. The appointment of all officers not otherwise directed by this constitution shall be made in such manner as may be prescribed by law; and all officers, both civil and military, acting under the authority of this state shall, before entry on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States and of this state, and to demean themselves faithfully in office.

SEC. 29. No county now established by law shall ever be reduced by the establishment of any new county or counties to less than nine hundred square miles, nor to a less population than its ratio of representation in the house of representatives; nor shall any county be hereafter established which shall contain less than nine hundred square miles (except Washington County, which may be reduced to six hundred square miles), or a less population than would entitle each county to a member in the house of representatives.

SEC. 30. The style of the laws of this state shall be: "Be it enacted by the general assembly of the State of Arkansas."

SEC. 31. The state shall, from time to time, be divided into convenient districts, in such manner that the senate shall be based upon the free white male inhabitants of the state, each senator representing an equal number, as nearly as practicable; and until the first enumeration of the inhabitants shall be taken the district shall be arranged as follows:

The County of Washington shall compose one district, and elect two senators.

The Counties of Carroll, Searcy and Izard shall compose one district, and elect one senator.

The Counties of Independence and Jackson shall compose one district, and elect one senator.

The Counties of Lawrence and Randolph shall compose one district, and elect one senator.

The Counties of Johnson and Pope shall compose one district, and elect one senator.

The Counties of Crawford and Scott shall compose one district, and elect one senator.

The Counties of Conway and Van Buren shall compose one district, and elect one senator.
 The Counties of Pulaski, White and Saline shall compose one district, and elect one senator.
 The Counties of Hot Spring, Clark and Pike shall compose one district, and elect one senator.
 The Counties of Hempstead and Lafayette shall compose one district, and elect one senator.
 The Counties of Sevier and Miller shall compose one district, and elect one senator.
 The Counties of Chicot and Union shall compose one district, and elect one senator.
 The Counties of Arkansas and Jefferson shall compose one district, and elect one senator.
 The Counties of Phillips and Monroe shall compose one district, and elect one senator.
 The Counties of St. Francis and Greene shall compose one district, and elect one senator.
 The Counties of Crittenden and Mississippi shall compose one district, and elect one senator.

And the senate shall never consist of less than seventeen, nor more than thirty-three members. And, as soon as the senate shall meet after the first election to be held under this constitution, they shall cause the senators to be divided by lot into two classes—nine of the first class and eight of the second; and the seats of the first class shall be vacated at the end of two years from the time of their election, and the seats of the second class at the end of four years from the time of their election, in order that one class of the senators may be elected every two years.

SEC. 32. An enumeration of the inhabitants of the state shall be taken under the direction of the general assembly on the first day of January, one thousand eight hundred and thirty-eight, and at the end of every four years thereafter; and the general assembly shall, at the first session after the return of every enumeration, so alter and arrange the senatorial districts that each district shall contain, as nearly as practicable, an equal number of free white male inhabitants. Provided, that Washington County, as long as its population shall justify the same, may, according to its numbers, elect more than one senator; and such districts shall then remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senatorial district.

SEC. 33. The ratio of representation in the senate shall be fifteen hundred free white male inhabitants to each senator, until the senators amount to twenty-five in number, and then they shall be equally apportioned upon the same basis throughout the state, in such ratio as the increased numbers of free white male inhabitants may require, without increasing the senators to a greater number than twenty-five, until the population of the state amounts to five hundred thousand souls; and when an increase of senators takes place, they shall, from time to time, be divided by lot and classed as prescribed above.

SEC. 34. The house of representatives shall consist of not less than fifty-four, nor more than one hundred, representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as the ratio until the number of representatives amounts to seventy-five, and when they amount to seventy-five they shall not be further increased until the population of the state amounts to five hundred thousand souls. Provided, that each county now organized shall, although its population may not give the existing ratio, always be entitled to one representative; and until the first enumeration shall be taken the representatives shall be apportioned among the several counties, as follows:

The County of Washington shall elect six representatives.
 The County of Scott shall elect one representative.
 The County of Johnson shall elect two representatives.
 The County of Pope shall elect two representatives.
 The County of Conway shall elect one representative.
 The County of Van Buren shall elect one representative.
 The County of Carroll shall elect two representatives.
 The County of Searcy shall elect one representative.
 The County of Izard shall elect one representative.
 The County of Independence shall elect two representatives.
 The County of Crawford shall elect three representatives.
 The County of Jackson shall elect one representative.
 The County of Lawrence shall elect two representatives.
 The County of Randolph shall elect two representatives.
 The County of White shall elect one representative.
 The County of Pulaski shall elect two representatives.
 The County of Saline shall elect one representative.
 The County of Hot Spring shall elect one representative.
 The County of Clark shall elect one representative.
 The County of St. Francis shall elect two representatives.
 The County of Pike shall elect one representative.
 The County of Hempstead shall elect two representatives.
 The County of Miller shall elect one representative.
 The County of Sevier shall elect one representative.
 The County of Lafayette shall elect one representative.
 The County of Union shall elect one representative.
 The County of Arkansas shall elect two representatives.
 The County of Jefferson shall elect one representative.
 The County of Monroe shall elect one representative.
 The County of Phillips shall elect two representatives.
 The County of Greene shall elect one representative.
 The County of Crittenden shall elect two representatives.
 The County of Mississippi shall elect one representative.
 The County of Chicot shall elect two representatives.

And at the first session of the general assembly after the return of every enumeration the representation shall be equally divided and reapportioned among the several counties, according to the number of free white males in each county, as above prescribed.

MODE OF AMENDING THE CONSTITUTION.

The general assembly may at any time propose such amendments to this constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state three several times, at least twelve months before the next general election; and if, at the first session of the general assembly after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution. Provided, that such proposed amendments shall be read on three several days in each house, as well when the same are proposed as when they are finally ratified.

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Arkansas."

SEC. 2. The governor shall be elected by the qualified electors at the time and places where they shall respectively vote for representatives.

SEC. 3. The returns of every election for governor shall be sealed up and transmitted to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be the governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly in such manner as shall be prescribed by law.

SEC. 4. The governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified, but he shall not be eligible for more than eight years in any term of twelve years. He shall be at least thirty years of age, a native-born citizen of Arkansas, or a native-born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States, and shall have been a resident of the same at least four years next before his election.

SEC. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive, within that period, any other emolument from the United States, or any one of them, or from any foreign power.

SEC. 6. He shall be commander-in-chief of the army of this state, and of the militia thereof, except when they shall be called into the service of the United States.

SEC. 7. He may require any information in writing from the officers of the executive department on any subject relating to the duties of their respective offices.

SEC. 8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place if that shall have become, since their last adjournment, dangerous from an enemy or from contagious diseases. In case of disagreement between the two houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper—not beyond the day of the next meeting of the general assembly.

SEC. 9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant pardons after conviction and remit fines and forfeitures under such rules and regulations as shall be prescribed by law. In cases of treason, he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons, and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

SEC. 12. There shall be a seal of this state, which shall be kept by the governor and used by him officially, and the present seal of the territory shall be the seal of the state until otherwise directed by the general assembly.

SEC. 13. All commissions shall be in the name and by the authority of the State of Arkansas, be sealed with the seal of the state, signed by the governor, and attested by the secretary of state.

SEC. 14. There shall be a secretary of state elected by a joint vote of both houses of the general assembly, who shall continue in office during the term of four years and until his successor in office be duly qualified. He shall keep a fair register of all the official acts and proceedings of the governor and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before the general assembly, and shall perform such other duties as may be required by law.

SEC. 15. Vacancies that may happen in offices the election to which is vested in the general assembly shall be filled by the governor during the recess of the general assembly by granting commissions, which shall expire at the end of the next session.

SEC. 16. Every bill which shall have passed both houses shall be presented to the governor. If he approve it he shall sign it, but if he shall not approve it he shall return it, with his objections, to the house in which it shall have originated, who shall enter his objections at large upon their journals and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be

sent, with the objections, to the other house, by which, likewise, it shall be reconsidered, and if approved by a majority of the whole number elected to that house it shall be a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within three days, Sundays excepted, after it shall have been presented to him the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in such case it shall not be a law.

SEC. 17. Every order or resolution to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, shall be repassed by both houses according to the rules and limitations prescribed in the case of a bill.

SEC. 18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation or absence from the state, the president of the senate shall exercise all the authority appertaining to the office of governor until another governor shall have been elected and qualified, or until the governor, absent or impeached, shall return or be acquitted.

SEC. 19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government.

SEC. 20. The president of the senate and the speaker of the house of representatives, during the time they respectively administer the government, shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 21. Whenever the office of governor shall have become vacant by death, resignation, removal from office or otherwise, provided such vacancy shall not happen within eighteen months of the term for which the late governor shall have been elected, the president of the senate or speaker of the house of representatives, as the case may be, exercising the powers of governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general elections of governor as far as applicable; the returns shall be made to the secretary of state, who, in presence of the acting governor and judges of the supreme court, or one of them at least, shall compare them, and, together with said acting governor and judges, declare who is elected; and if there be a contested election it shall be decided by the judges of the supreme court in manner to be prescribed by law.

SEC. 22. The governor shall always reside at the seat of government.

SEC. 23. No person shall hold the office of governor and any other office or commission, civil or military, either in this state or under any state, or the United States or any other power, at one and the same time.

SEC. 24. There shall be elected by the joint vote of both houses of the general assembly an auditor and treasurer for this state, who shall hold their offices for the term of two years and until their respective successors are elected and qualified, unless sooner removed, and shall keep their respective offices at the seat of government and perform such duties as shall be prescribed by law; and in case of vacancy by death, resignation or otherwise, such vacancy shall be filled by the governor as in other cases.

MILITIA.

SECTION 1. The militia of this state shall be divided into convenient divisions, brigades, regiments and companies, and officers of corresponding titles and rank elected to command them, conforming, as nearly as practicable, to the general regulations of the army of the United States.

SEC. 2. Major-generals shall be elected by the brigadier-generals and field officers of their respective divisions; brigadier-generals shall be elected by the field officers and commissioned company officers of their respective brigades; field officers shall be elected by the officers and privates of their respective regiments, and captains and subaltern officers shall be elected by those subject to military duty in their respective companies.

SEC. 3. The governor shall appoint the adjutant-general and other members of his staff, and major-generals, brigadier-generals and commanders of regiments shall respectively appoint their own staff, and all commissioned officers may continue in office during good behavior, and staff officers during the same time, subject to be removed by the superior officer from whom they respectively derive their commissions.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary in corporation courts, and when they deem it expedient may establish courts of chancery.

SEC. 2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, any two of whom shall constitute a quorum, and the concurrence of any two of said judges shall in every case be necessary to a decision. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, under such restrictions and regulations as may from time to time be prescribed by law. It shall have a general superintending control over all inferior and other courts of law and equity. It shall have power to issue writs of error and *suppetendous*, *certiorari* and *habeas corpus*, *mandamus* and *quo warrantu* and other remedial writs, and to hear and determine the same. Said judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

SEC. 3. The circuit court shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony at the common law, and original jurisdiction of all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly, and original jurisdiction in all matters of contract where the sum in controversy is over one hundred dollars. It shall hold its terms at such place in each county as may be by law directed.

SEC. 4. The state shall be divided into convenient circuits, each to consist of not less than five nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who during his continuance in office shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

SEC. 5. The circuit courts shall exercise a superintending control over the county courts and over justices of the peace in each county in their respective circuits, and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

SEC. 6. Until the general assembly shall deem it expedient to establish courts of chancery the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court in such manner as may be prescribed by law.

SEC. 7. The general assembly shall by joint vote of both houses elect the judges of the supreme and circuit courts, a majority of the whole number in joint vote being necessary to a choice. The judges of the supreme court shall be at least thirty years of age; they shall hold their offices during the term of eight years from the date of their commissions. Immediately after such election by the first general assembly, the president of the senate and speaker of the house of representatives shall proceed by lot to divide the judges into three classes. The commissions of the first class shall expire at the end of four years; of the second class at the end of six years, and of the third class at the end of eight years, so that one-third of the whole number shall be chosen every four, six and eight years. The judges of the circuit court shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions. The supreme court shall appoint its own clerk or clerks for the term of four years. The qualified voters of each county shall elect a clerk of the circuit court for their respective counties, who shall hold his office for the term of two years; and courts of chancery, if any be established, shall appoint their own clerks.

SEC. 8. The judges of the supreme and circuit courts shall at stated times receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States. The state's attorneys and clerks of the supreme and circuit courts and courts of chancery, if any such be established, shall receive for their services such salaries, fees and perquisites of office as shall be from time to time fixed by law.

SEC. 9. There shall be established in each county in the state a court to be holden by the justices of the peace, and called the county court, which shall have jurisdiction in all matters relating to county taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

SEC. 10. There shall be elected by the justices of the peace of their respective counties a presiding judge of the county court, to be commissioned by the governor, and hold his office for the term of two years, and until his successor is elected and qualified. He shall, in addition to the duties that may be required of him by law as a presiding judge of the county court, be a judge of the court of probate, and have such jurisdiction in matters relative to the estates of deceased persons, executors, administrators and guardians, as may be prescribed by law, until otherwise directed by the general assembly.

SEC. 11. The presiding judge of the county court and justices of the peace shall receive for their services such compensation and fees as the general assembly may from time to time by law direct.

SEC. 12. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been of counsel or have presided in any inferior court, except by consent of all the parties. In case all or any of the judges of the supreme court shall be thus disqualified from presiding on any cause or causes, the court or judges thereof shall certify the same to the governor of the state, and he shall immediately commission specially the requisite number of men of law knowledgeable for the trial and determination thereof. The same course shall be pursued in the circuit and other inferior courts as prescribed in this section for cases in the supreme court. Judges of the circuit courts may temporarily exchange circuits, or hold courts for each other, under such regulations as may be pointed out by law. Judges shall not charge juries with regard to matter of fact, but may state the testimony and declare the law.

SEC. 13. The general assembly shall, by a joint vote of both houses, elect an attorney for the state for each circuit established by law, who shall continue in office two years and reside within the circuit for which he was elected at the time of and during his continuance in office. In all cases where an attorney for the state of any circuit fails to attend and prosecute according to law the court shall have power to appoint an attorney *pro tempore*. The attorney for the circuit in which the supreme court may hold its terms shall attend the supreme court and prosecute for the state.

SEC. 14. All writs and other process shall run in the name of the "State of Arkansas" and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

SEC. 15. The qualified voters residing in each township shall select the justices of the peace for their respective townships. For every fifty voters there may be elected one justice of the peace, provided that each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for the term of two years, and shall be commissioned by the governor and reside in the townships for which they were elected during their continuance in office. They shall have individually, or two or more of them jointly,

exclusive original jurisdiction in all matters of contract, except in actions of covenant where the sum in controversy is of one hundred dollars and under. Justices of the peace shall in no case have jurisdiction to try and determine any criminal case or penal offense against the state, but may sit as examining courts and commit, discharge or recognize to the court having jurisdiction, for further trial, offenders against the peace. For the foregoing purposes they shall have power to issue all necessary process. They shall also have power to bind to keep the peace or for good behavior.

SEC. 16. The qualified voters of each township shall elect one constable for the term of two years, who shall, during his continuance in office, reside in the township for which he was elected. Incorporated towns may have a separate constable and a separate magistracy.

SEC. 17. The qualified voters of each county shall elect one sheriff, one coroner, one treasurer and one county surveyor for the term of two years. They shall be commissioned by the governor, reside in their respective counties during their continuance in office and be disqualified for the office a second term if it should appear that they, or either of them, are in default for any moneys collected by virtue of their respective offices.

ARTICLE VII.

GENERAL PROVISIONS—EDUCATION.

Knowledge and learning generally diffused through a community being essential to the preservation of a free government, and diffusing the opportunities and advantages of education through the various parts of the state being highly conducive to this end, it shall be the duty of the general assembly to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this state for the use of schools, and to apply any funds which may be raised from such lands, or from any other source, to the accomplishment of the object for which they are, or may be, intended. The general assembly shall from time to time pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures and natural history, and countenance and encourage the principles of humanity, industry and morality.

EMANCIPATION OF SLAVES.

SECTION 1. The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of the owners. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States. They shall have power to pass laws to permit owners of slaves to emancipate them, saving the right of creditors and preventing them from becoming a public charge. They shall have power to prevent slaves from being brought to this state as merchandise, and also to oblige the owners of slaves to treat them with humanity.

SEC. 2. Treason against the state shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 3. No person who denies the being of a God shall hold any office in the civil department of this state, nor be allowed his oath in any court.

SEC. 4. No money shall be drawn from the treasury but in consequence of an appropriation by law, nor shall any appropriation of money for the support of an army be made for a longer term than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

SEC. 5. Absence on business of this state, or of the United States, or on a visit or necessary private business, shall not cause a forfeiture of a residence once obtained.

SEC. 6. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

SEC. 7. Internal improvement shall be encouraged by the government of this state, and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals and navigable waters; and it shall also be their duty to provide by law for an equal, systematic and economical application of the funds which may be appropriated to these objects.

SEC. 8. Returns for all elections for officers who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

SEC. 9. Within five years after the adoption of this constitution the laws—civil and criminal—shall be revised, digested and arranged, and promulgated in such manner as the general assembly may direct; and a like revision, digest and promulgation shall be made within every subsequent period of ten years.

SEC. 10. In the event of the annexation of any territory to this state, by a session from the United States, laws may be passed extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, anything in this constitution to the contrary notwithstanding.

SEC. 11. The person of a debtor, except where there is strong presumption of fraud, shall neither be imprisoned nor continued in prison after delivering up his estate for the benefit of his creditors, in such manner as may be prescribed by law.

REVENUE.

SECTION 1. All revenues shall be raised by taxation to be fixed by law.

SEC. 2. All property *subject to taxation* shall be taxed according to its value—that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the

state. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value. Provided, the general assembly shall have power to tax merchants, hawkers, peddlers and privileges in such manner as may, from time to time, be prescribed by law. And provided, further, that no other or greater amount of revenue shall at any time be levied than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both houses of the general assembly.

SEC. 3. No poll-tax shall be assessed for other than county purposes.

SEC. 4. No other or greater tax shall be levied on the productions or labor of the country than may be required for expenses of inspection.

ESTABLISHMENT OF BANKS.

SECTION 1. The general assembly may incorporate one state bank, with such amount of capital as may be deemed necessary, and such number of branches as may be required for the public convenience, which shall become the repository of the funds belonging to or under control of the state, and shall be required to loan them out throughout the state and in each county in proportion to representation. And they shall further have power to incorporate one other banking institution, calculated to aid and promote the great agricultural interests of the country, and the faith and credit of the state may be pledged to raise the funds necessary to carry into operation the two banks herein specified. Provided, such security can be given by the individual stockholders as will guarantee the state against loss or injury.

SCHEDULE.

SECTION 1. That no inconvenience may arise from the change of government, we declare that all writs, actions, prosecutions, judgments, claims and contracts of individuals and bodies corporate shall continue as if no change had taken place, and all process which may be issued under the authority of the Territory of Arkansas previous to the admission of Arkansas into the union of the United States shall be as valid as if issued in the name of the state.

SEC. 2. All laws now in force in the Territory of Arkansas which are not repugnant to this constitution shall remain in force until they expire by their own limitations, or be altered or repealed by the general assembly.

SEC. 3. All fines, penalties and escheats accruing to the Territory of Arkansas shall accrue to the use of the state.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change of territorial to a permanent state government, shall remain valid and shall pass over to and be prosecuted in the name of the state, and all bonds executed to the governor of the territory, or to any other officer or court in his or their official capacity, shall pass over to the governor or other state authority and their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which may have arisen or which may arise before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the state. All actions at law which now are or may be pending in any of the courts of record in the Territory of Arkansas may be commenced in or transferred to any court of record of the state which shall have jurisdiction of the subject-matter thereof, and all suits in equity may in like manner be commenced in or transferred to the court having chancery jurisdiction.

SEC. 5. All officers, civil and military, now holding commissions under authority of the United States, or of the Territory of Arkansas shall continue to hold and exercise their respective offices until they shall be superseded under the authority of the state.

SEC. 6. The first session of the general assembly of the State of Arkansas shall be held at the City of Little Rock, which shall be and remain the seat of government until otherwise provided for by law.

SEC. 7. Elections shall be held at the several precincts on the first Monday of August next for a governor; also, one representative to the congress of the United States; also, for senators and representatives to the next general assembly, clerks of the circuit and county courts, sheriffs, coroners, county surveyors and treasurers, justices of the peace and constables.

SEC. 8. The next general assembly shall be holden on the second Monday of September next.

SEC. 9. The election shall be conducted according to the existing laws of the Territory of Arkansas, and the returns of all township elections held in pursuance thereof shall be made to the clerks of the proper counties within five days after the day of election. The clerks of the circuit courts of the several counties shall immediately thereafter certify the returns of the election of governor, and transmit the same to the speaker of the house of representatives, at the seat of government, in such time that they may be received on the second Monday of September next. As soon as the general assembly shall be organized the speaker of the house of representatives and the president of the senate shall, in the presence of both houses, examine the returns and declare who is duly elected to fill that office; and if any two or more persons shall have an equal number of votes and a higher number than any other person, the general assembly shall determine the

election by a joint vote of both houses; and the returns of the election for member to congress shall be made to the secretary of state within thirty days after the day of election.

SEC. 10. The oaths of office may be administered by any judge or justice of the peace until the general assembly shall otherwise direct.

Done in convention at Little Rock, in the State of Arkansas, the thirtieth day of January, in the year of our Lord eighteen hundred and thirty-six, and in the sixtieth year of the independence of the United States of America.

JOHN WILSON,

President of the Convention, and Representative from the County of Clark.

JOHN ADAMS,
WM. MCK. BALL,
JAS. WOODSON BATES,
MARK BEAN,
HENRY LAWSON BISCOE,
JAMES BOONE,
R. C. S. BROWN,
JOHN D. CALVERT,
LORENZO N. CLARK,
JOHN CLARK,
J. S. CONWAY,
WILLIAM CUMMINS,
ANTHONY H. DAVIES,
TOWNSEND DICKINSON,
G. MARSHALL,
G. L. MARTIN,
ANDREW J. MAY,

ROBERT M'KAMY,
JOS. W. M'KEAN,
JOHN M'LAIN,
NIMROD MENIFEE,
THOMAS MURRAY, JR.,
JOHN RINGGOLD,
SAM. C. ROANE,
JOHN ROBINSON,
JOHN DRENNEN,
THOMAS S. DREW,
WRIGHT W. ELLIOTT,
TERRENCE FARRELLY,
GEORGE W. FEREBEE,
ABSALOM FOWLER,
GEORGE HALBROOK,
ELIJAH KELLY,
JOHN F. KING,

THOS. J. LACY,
JOHN L. LAFFERTY,
BUSHROD W. LEE,
DAVID W. LOWE,
CALEB S. MANLEY,
GRANDISON D. ROYSTON,
CHARLES R. SAUNDERS,
ANDREW SCOTT,
HENRY SLAVENS,
ROBERT SMITH,
WM. STRONG,
JAMES H. WALKER,
DAVID WALKER,
JOSIAH N. WILSON,
ABRAHAM WHINNERY,
TRAVIS G. WRIGHT,

CHARLES P. BERTRAND,
Secretary to the Convention.

AMENDMENTS

TO THE

CONSTITUTION OF ARKANSAS OF 1836.

Proposed by the General Assembly, begun and held at the City of Little Rock, in the State of Arkansas, on the first Monday of November, one thousand eight hundred and forty-four, and ratified by the General Assembly, begun and held at the City of Little Rock, on the first Monday of November, one thousand eight hundred and forty-six:

1. No bank or banking institution shall be hereafter incorporated or established in this state.
2. The general assembly shall have power to compel the judges of the circuit courts to interchange circuits, either temporarily or permanently, under such regulations as may be provided by law.
3. The general assembly shall have power to confer such jurisdiction as it may from time to time deem proper on justices of the peace in all matters of contract, covenants and in actions for the recovery of fines and forfeitures when the amount claimed does not exceed one hundred dollars, and in actions and prosecutions for assault and battery, and other penal offenses less than felony, which may be punishable by fine only.
4. Judges of the supreme and circuit courts, clerks of the supreme and circuit courts, attorneys for the state, sheriffs, coroners, county treasurers, justices of the peace, constables and all other officers whose term is fixed by the constitution to a specific number of years shall hold their respective offices for the term now specified and until their successors are elected and qualified.

Ratified November 17, 1846.

Proposed by the General Assembly, begun and held at the City of Little Rock, in the State of Arkansas, on the first Monday of November, one thousand eight hundred and forty-six, and ratified by the General Assembly, begun and held at the City of Little Rock, on the first Monday of November, one thousand eight hundred and forty-eight:

1. That the qualified voters of each judicial circuit in the State of Arkansas shall elect their circuit judge.
2. That the qualified voters of each judicial circuit shall elect their prosecuting attorney for the state.
3. That the qualified voters of each county shall elect a county and probate judge.
4. That no member of the general assembly shall be elected to any office within the gift of the general assembly during the term for which he shall have been elected.
5. That the general assembly of the State of Arkansas shall not be restricted as to the number of counties that shall compose a judicial circuit in this state.

Ratified November 24, 1848.

Proposed by the General Assembly, begun and held at the City of Little Rock, in the State of Arkansas, on the first Monday of November, one thousand eight hundred and forty-eight, and ratified by the General Assembly, begun and held at the City of Little Rock, on the first Monday of November, one thousand eight hundred and fifty, viz.:

That the words, "except Washington County, which may be reduced to six hundred square miles," included in parentheses in section 29 of article IV, be stricken out of said constitution.

Ratified December 2, 1850.

THE
CONSTITUTION
OF THE
STATE OF ARKANSAS
OF
1864.

THE
CONSTITUTION
OF THE
STATE OF ARKANSAS
OF 1864.

We, the people of the State of Arkansas, having the right to establish for ourselves a constitution in conformity with the constitution of the United States of America, recognizing the legitimate consequences of the existing rebellion, do hereby declare the entire action of the late convention of the State of Arkansas, which assembled in the City of Little Rock on the 4th day of March, 1861, was, and is, null and void, and is not now, and never has been, binding and obligatory upon the people.

That all the action of the State of Arkansas under the authority of said convention, of its ordinances, or of its constitution, whether legislative, executive, judicial or military (except as hereinafter provided), was, and is, hereby declared null and void, provided that this ordinance shall not be so construed as to affect the rights of individuals, or change county boundaries or county seats, or to make invalid the acts of justices of the peace or other officers in their authority to administer oaths or take and certify the acknowledgment of deeds of conveyance or other instruments of writing, or in the solemnization of marriages; and provided, further, that no debt or liability of the State of Arkansas incurred by the action of said convention, or of the legislature, or any department of the government under the authority of either, shall ever be recognized as obligatory.

And we, the people of the State of Arkansas, in order to establish therein a state government loyal to the government of the United States, to secure to ourselves and our posterity the protection and blessings of the federal constitution and the enjoyment of all the rights of liberty and the free pursuit of happiness, do agree to continue ourselves as a free and independent state by the name and style of "*The State of Arkansas*," and do ordain and establish the following constitution for the government thereof:

ARTICLE I.

BOUNDARIES OF THE STATE.

We do declare and establish, ratify and confirm the following as the permanent boundaries of the State of Arkansas, that is to say: Beginning in the middle of the Mississippi River, on the parallel of thirty-six degrees north latitude, to the St. Francis River; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north, from the west to the south-west corner of the State of Missouri, and from thence to be bounded on the west to the north bank of Red River, as by acts of congress of the United States and treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the boundary line of the State of Texas, to the north-west corner of the State of Louisiana; thence east with the Louisiana state line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river to the thirty-sixth degree of north latitude, the point of beginning—these being the boundaries of the State of Arkansas as defined by the constitution thereof, adopted by a convention of the representatives of the people of said state on the 30th day of January, Anno Domini eighteen hundred and thirty-six, being the same boundaries which limited the area of the Territory of Arkansas as it existed prior to that time.

ARTICLE II.

DECLARATION OF RIGHTS.

That the great and essential principles of liberty and free government may be unalterably established, we DECLARE:

SECTION 1. That all men, when they form a social compact, are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation and of pursuing their own happiness.

SEC. 2. That all power is inherent in the people, and all free governments are formed on their authority and instituted for their peace and happiness. For the advancement of these ends they have, at all times, an unqualified right to alter, reform or abolish their government in such manner as they may think proper.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences, and no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can, in any case whatever, interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

SEC. 4. That the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

SEC. 5. That all elections shall be free and equal.

SEC. 6. That the right of trial by jury shall remain inviolate.

SEC. 7. That printing presses shall be free to every person, and no law shall ever be made to restrain the rights thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject—being responsible for the abuse of that liberty.

SEC. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels the jury shall have the right to determine the law and the facts.

SEC. 9. That the people shall be secure in their persons, houses, papers and possessions from unreasonable search and seizures, and that general warrants, whereby any officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named whose offenses are not particularly described and supported by evidence, are dangerous to liberty, and shall not be granted.

SEC. 10. That no man shall be taken or imprisoned, or dis seized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

SEC. 11. That in all criminal prosecutions the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment a speedy public trial by an impartial jury of the county or district in which the crime may have been committed, and shall not be compelled to give evidence against himself.

SEC. 12. That no person shall for the same offense be twice put in jeopardy of life or limb.

SEC. 13. That all penalties shall be reasonable, and proportionate to the nature of the offense.

SEC. 14. That no man shall be put to answer any criminal charge but by presentment, indictment or impeachment, except as hereinafter provided.

SEC. 15. That no conviction shall work corruption of blood or forfeiture of estate under any law of this state.

SEC. 16. That all prisoners shall be bailable by sufficient securities, unless in capital offenses where the proof is evident or the presumption great. And the privilege of the writ of *habeas corpus* shall not be suspended, unless where, in case of rebellion or invasion, the public safety may require it.

SEC. 17. That excessive bail shall in no case be required, nor excessive fines imposed.

SEC. 18. That no *ex post facto* law, or law impairing the obligations of contracts, shall ever be made.

SEC. 19. That perpetuities and monopolies are contrary to the genius of a republic and shall not be allowed, nor shall any hereditary emoluments, privileges or honors ever be granted or conferred in this state.

SEC. 20. That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives and to apply to those invested with the power of the government for redress of grievances or other proper purposes, by address or remonstrance.

SEC. 21. That the free white men of this state shall have a right to keep and to bear arms for their common defense.

SEC. 22. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

SEC. 23. The military shall be kept in strict subordination to the civil power.

SEC. 24. This enumeration of rights shall not be construed to deny or disparage others retained by the people, and, to guard against any encroachments on the rights herein retained or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE III.

OF DEPARTMENTS.

SECTION 1. The power of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit: those which are legislative to one, those which are executive to another, and those which are judicial to another.

SEC. 2. No person or collection of persons, being of one of those departments, shall exercise any power belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this state shall be invested in a general assembly, which shall consist of a senate and house of representatives.

QUALIFICATIONS OF ELECTORS.

SEC. 2. Every free white male citizen of the United States who shall have attained the age of twenty-one years, and who shall have been a citizen of the state six months next preceding the election, shall be deemed a qualified elector and be entitled to vote in the county or district where he actually resides, or, in case of volunteer soldiers, within their several military departments or districts, for each and every office made elective under the state or under the United States, provided that no soldier, seaman or marine in the regular army or navy of the United States shall be entitled to vote at any election within the state in time of peace, and provided, further, that any one entitled to vote in this state in the county where he resides may vote for the adoption or rejection of this constitution in any county in this state.

TIME OF CHOOSING REPRESENTATIVES.

SEC. 3. The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

QUALIFICATIONS OF A REPRESENTATIVE.

SEC. 4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-five years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state one year, and who shall not, at the time of his election, have an actual residence in the county he may be chosen to represent.

QUALIFICATIONS OF A SENATOR.

SEC. 5. The senate shall consist of members to be chosen every four years by the qualified electors of the several districts.

SEC. 6. No person shall be a senator who shall not have attained the age of twenty-five years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of the state one year, and who shall not, at the time of his election, have an actual residence in the district he may be chosen to represent.

SEC. 7. The general assembly shall meet every two years, on the first Monday in November, at the seat of government until changed by law, except that the general assembly for the year 1864 shall meet on the second Monday in April of that year.

MODE OF ELECTION AND TIME AND PRIVILEGES OF ELECTORS.

SEC. 8. All general elections shall be *visa voce* until otherwise directed by law, and commence and be holden every two years, on the first Monday in August, until altered by law, (except that) the first election under this constitution shall be held on the second Monday in March, 1864, and the electors in all cases, except in cases of treason, felony and breach of the peace, shall be privileged from arrest during their attendance on elections and in going to and returning therefrom.

DUTY OF GOVERNOR.

SEC. 9. The governor shall issue writs of election to fill such vacancies as shall occur in either house of the general assembly.

SEC. 10. No judge of the supreme, circuit or inferior courts of law or equity, secretary of state, attorney-general of the state, district attorneys, state auditor or treasurer, register or recorder, clerk of any court of record, sheriff, coroner or member of congress, nor any other person holding any lucrative office under the United States or this state (militia officers, justices of the peace, postmasters and judges of the county courts excepted), shall be eligible to a seat in either house of the general assembly.

SEC. 11. No person who now is, or shall be hereafter, a collector or holder of public money, nor any assistant or deputy of such holder or collector of public money, shall be eligible to a seat in either house of the general assembly, nor to any office of trust or profit, until he shall have accounted for and paid over all sums for which he may have been liable.

SEC. 12. The general assembly shall exclude from every office of trust or profit, and from the right of suffrage within this state, all persons convicted of bribery or perjury or other infamous crime.

SEC. 13. Every person who shall have been convicted, either directly or indirectly, of giving or offering any bribe to procure his election or appointment shall be disqualified from holding any office of trust or profit under this state; and any person who shall give or offer any bribe to procure the election or appointment of any person shall, on conviction thereof, be disqualified from being an elector, or from holding office of trust or profit under this state.

SEC. 14. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this state which shall have been created, or the emoluments of which shall have been increased, during his continuance in office, except to such office as shall be filled by the election of the people.

SEC. 15. Each house shall appoint its own officers and shall judge of the qualifications, returns and elections of its own members. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each house shall provide.

SEC. 16. Each house may determine the rules of its proceedings, punish its own members for disorderly behavior, and, with the concurrence of two-thirds of the members elected, expel a member; but no member shall be expelled a second time for the same offense. They shall each from time to time publish a journal of their proceedings, except such parts as may require secrecy, and the yeas and nays upon any question shall be entered on the journal at the desire of any five members.

SEC. 17. The door of each house when in session or in committee of the whole shall be kept open, except in cases which may require secrecy; and each house may punish by fine and imprisonment any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in their presence during their session; but such imprisonment shall not extend beyond the final adjournment of that session.

SEC. 18. Bills may originate in either house and be amended or rejected in the other, and every bill for an act shall be read three times before each house, twice at length, and in no case shall a bill be read more than twice on one day; and the vote upon the passage of any law shall in all cases be taken by yeas and nays, and by recording the same; and every bill having passed both houses shall be signed by the president of the senate and the speaker of the house of representatives.

SEC. 19. Whenever an officer, civil or military, shall be appointed by the joint or concurrent vote of both houses or by the separate vote of either house of the general assembly, the vote shall be taken *viva voce* and entered on the journal.

SEC. 20. The senators and representatives shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly and for fifteen days before the commencement and after the termination of each session, and for any speech or debate in either house they shall not be questioned in any other place.

SEC. 21. The members of the general assembly shall severally receive from the public treasury compensation for their services, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.

MANNER OF BRINGING SUITS AGAINST THE STATE.

SEC. 22. The general assembly shall direct by law in what courts and in what manner suits may be commenced against the state.

SEC. 23. The general assembly shall not have power to pass any bill of divorce, but may prescribe by law the manner in which such cases may be investigated in the courts of justice and divorces granted.

SEC. 24. The governor, lieutenant-governor, secretary of state, auditor, treasurer and all judges of the supreme, circuit and inferior courts of law and equity, and the prosecuting attorneys for the state, shall be liable to impeachment for any malpractice or misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under this state. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried and punished according to law.

SEC. 25. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate, and when sitting for that purpose the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried the chief justice of the supreme court shall preside, and no person shall be convicted without the concurrence of two-thirds of all the senators elected; and for reasonable cause which shall not be sufficient grounds for impeachment the governor shall, on the joint address of two-thirds of each branch of the legislature, remove from office the judges of the supreme and inferior courts. Provided, the cause or causes of removal be spread on the journals, and the party charged be notified of the same and heard by himself and counsel before the vote is finally taken and decided.

SEC. 26. The appointment of all officers not otherwise directed by this constitution shall be made in such manner as may be prescribed by law; and all officers, both civil and military, acting under the authority of this state shall, before entering on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States and of this state, and to demean themselves faithfully in office.

SEC. 27. No county now established by law shall ever be reduced, by the establishment of any new county or counties, to less than six hundred square miles nor to a less population than its ratio of representation in the house of representatives, nor shall any county be hereafter established which shall contain less than six hundred square miles or a less population than would entitle each county to a member in the house of representatives.

SEC. 28. The style of the laws of this state shall be: "Be it enacted by the general assembly of the State of Arkansas."

SEC. 29. The state shall, from time to time, be divided into convenient districts, in such manner that the senate shall be based upon the free white male inhabitants of the state, each senator representing an equal number as nearly as practicable, and the senate shall never consist of less than seventeen nor more than thirty-three members, and as soon as the senate shall meet after the first election to be held under this constitution, they shall cause the senators to be divided by lot into two classes, nine of the first class and eight of the second, and the seats of the first class shall be vacated at the end of two years from the time of their election, and the seats of the second class at the end of four years from the time of their election, in order that one class of the senators may be elected every two years.

SEC. 30. An enumeration of the inhabitants of the state shall be taken under the direction of the general assembly on the first day of January, one thousand eight hundred and sixty-five, and at the end of every ten years thereafter, and the general assembly shall, at the first session after the return of every enumeration, so alter and arrange the senatorial districts that each district shall contain, as nearly as practicable, an equal number of free white male inhabitants.

SEC. 31. The ratio of representation in the senate shall be fifteen hundred free white male inhabitants to each senator, until the senators amount to twenty-five in number, and then they shall be equally apportioned upon the same basis throughout the state, in such ratio as the increased number of free white male inhabitants may require, without increasing the senators to a greater number than twenty-five, until the population of the state amounts to five hundred thousand souls, and when an increase of senators takes place they shall, from time to time, be divided by lot and be classed as prescribed above.

SEC. 32. The house of representatives shall consist of not less than fifty-four nor more than one hundred representatives, to be apportioned among the several counties in this state, according to the number of free white male inhabitants therein, taking five hundred as the ratio, until the number of representatives amounts to seventy-five, and when they amount to seventy-five they shall not be further increased until the population of the state amounts to five hundred thousand souls. Provided, that each county now organized shall, although its population may not give the existing ratio, always be entitled to one representative, and at the first session of the general assembly after the return of every enumeration the representation shall be equally divided and reapportioned among the several counties, according to the number of free white males in each county, as above prescribed.

MODE OF AMENDING THE CONSTITUTION.

The general assembly may at any time propose such amendments to this constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state three several times, at least twelve months before the next general election, and if, at the first session of the general assembly after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution. Provided, that such proposed amendments shall be read on three several days in each house, as well when the same are proposed as when they are finally ratified.

ARTICLE V.

ABOLISHMENT OF SLAVERY.

SECTION 1. Neither slavery nor involuntary servitude shall hereafter exist in this state, otherwise than for the punishment for crime, whereof the party shall have been convicted by due process of law, nor shall any male person arrived at the age of twenty-one years, nor female arrived at the age of eighteen years, be held to serve any person as a servant under any indenture or contract hereafter made, unless such person shall enter into such indenture or contract while in a perfect state of freedom, and on condition of a *bona fide* consideration received or to be received for their services.

Nor shall any indenture of any negro or mulatto hereafter made and executed out of this state, or if made in this state, where the term of service exceeds one year, be of the least validity, except those given in case of apprenticeship, which shall not be for a longer term than until the apprentice shall arrive at the age of twenty-one years, if a male, or the age of eighteen years, if a female.

ARTICLE VI.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "the Governor of Arkansas."

SEC. 2. The governor shall be elected by the qualified electors at the time and places where they shall respectively vote for representatives.

SEC. 3. The returns of every election for governor, except those of the election of eighteen hundred and sixty-four, which shall be sealed and directed as ordered in the schedule appended to this constitution, shall be sealed up and transmitted to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but, if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses of the general assembly in such manner as shall be prescribed by law.

SEC. 4. The governor shall hold his office for the term of four years from the time of his installation and until his successor shall be duly qualified, but he shall not be eligible for more than eight years in any term of twelve years. He shall be at least thirty years of age, a native-born citizen of Arkansas, or a native-born citizen of the United States, or a resident of Arkansas ten years previous to the adoption of this constitution, if not a native of the United States, and shall have been a resident of the same at least four years next before his election.

SEC. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected, nor shall he receive, within that period, any other emolument from the United States, or any one of them, or from any foreign power.

SEC. 6. He shall be commander-in-chief of the army of this state and of the militia thereof, except when they shall be called into the service of the United States.

SEC. 7. He may require any information in writing from the officers of the executive department on any subject relating to the duties of their respective offices.

SEC. 8. He may, by proclamation, on extraordinary occasions convene the general assembly at the seat of government, or at a different place if that shall have become, since their last adjournment, dangerous from an enemy or from contagious diseases. In case of disagreement between the two houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting of the general assembly.

SEC. 9. He shall, from time to time, give to the general assembly information of the state of the government and recommend to their consideration such measures as he may deem expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant pardons, after conviction, and remit fines and forfeitures under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons, and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

SEC. 12. There shall be a seal of this state, which shall be kept by the governor and used by him officially.

SEC. 13. All commissions shall be in the name and by the authority of the State of Arkansas, be sealed with the seal of this state, signed by the governor and attested by the secretary of state.

SEC. 14. There shall be elected a secretary of state by the qualified voters of the state, who shall continue in office during the term of four years and until his successor in office be duly qualified; he shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before the general assembly, and shall perform such other duties as may be required by law.

SEC. 15. Vacancies that may happen in offices the election of which is vested in the general assembly shall be filled by the governor, during the recess of the general assembly, by granting commissions, which shall expire at the end of the next session.

SEC. 16. Vacancies that may occur in offices the election to which is vested in the people, within less than one year before the expiration of their term, shall be filled by the governor granting commissions, which shall expire at the end of the next term; but if one year or a longer period remains unexpired at the time of the vacancy, then and in that case the governor shall order an election to be held to fill the vacancy.

SEC. 17. Every bill which shall have passed both houses shall be presented to the governor. If he approve it he shall sign it; but if he shall not approve it he shall return it, with his objections, to the house in which it shall have originated, who shall enter his objections at large upon their journals and proceed to reconsider it. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered; and if approved by a majority of the whole number elected to that house it shall be a law; but in such cases the votes of both houses shall be determined by yeas and nays and the names of the persons voting for or against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within three days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in such case it shall not be a law.

SEC. 18. Every order or resolution to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses according to the rules and limitations prescribed in the case of a bill.

SEC. 19. A lieutenant-governor shall be chosen at every election for governor in the same manner, continue in office for the same time and possess the same qualifications. In voting for governor and lieutenant-governor the electors distinguish for whom they vote as governor and for whom as lieutenant-governor.

SEC. 20. He shall, by virtue of his office, be president of the senate, have a right when in committee of the whole to debate, and whenever the senate are equally divided shall give the casting vote.

SEC. 21. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president of the senate for that occasion, and if, during the vacancy of the office of the governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, or resign, or die, or be absent from the state, the president of the senate shall in like manner administer the government.

SEC. 22. The lieutenant-governor while he acts as president of the senate shall receive for his services the same compensation which shall for the same period be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government as governor he shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 23. In case of an impeachment of the governor, his removal from office, death, refusal to qualify, resignation or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor until the time pointed out by this constitution for the election of a governor shall arrive, unless the general assembly shall provide by law for the election of governor to fill such vacancy.

SEC. 24. The governor shall always reside at the seat of government.

SEC. 25. No person shall hold the office of governor or lieutenant-governor and any other office or commission, civil or military, either in this state or under any state, or the United States, or any other power, at one and the same time.

SEC. 26. There shall be elected by the qualified voters of this state an auditor and treasurer for this state, who shall hold their offices for the term of two years, and until their respective successors are elected and qualified, unless sooner removed; and shall keep their respective offices at the seat of government and perform such duties as shall be prescribed by law; and, in case of vacancy by death, resignation or otherwise, such vacancy shall be filled by the governor as in other cases.

MILITIA.

SECTION 1. The militia of this state shall be divided into convenient divisions, brigades, regiments and companies, and officers of corresponding titles and rank elected to command them, conforming as nearly as practicable to the general regulations of the army of the United States; and all officers shall be elected by those subject to military duty in their several districts, except as hereinafter provided.

SEC. 2. The governor shall appoint the adjutant-general and other members of his staff, and major-generals, brigadier-generals and commanders of regiments shall respectively appoint their own staff; and all commissioned officers may continue in office during good behavior, and staff officers during the same time, subject to be removed by the superior officer from whom they respectively derive their commissions.

ARTICLE VII.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this state shall be vested in one supreme court, in circuit courts, in county courts and in justices of the peace. The general assembly may also vest such jurisdiction as may be deemed necessary in corporation courts, and, when they deem it expedient, may establish courts of chancery.

SEC. 2. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, any two of whom shall constitute a quorum, and the concurrence of any two of said judges shall in every case be necessary to a decision.

The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations as may from time to time be prescribed by law.

It shall have a general superintending control over all inferior and other courts of law and equity. It shall have power to issue writs of error, *supersedeas*, *certiorari* and *habeas corpus*, *mandamus* and *quo warranto* and other remedial writs, and to hear and determine the same. Said judges shall be conservators of the peace throughout the state, and shall have power to issue any of the aforesaid writs.

SEC. 3. The circuit court shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony at the common law, and original jurisdiction of all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly, and original jurisdiction in all matters of contract where the sum in controversy is over two hundred dollars. It shall hold its terms at such place in each county as may be by law directed.

SEC. 4. The state shall be divided into convenient circuits, each to consist of not less than five nor more than seven counties contiguous to each other, for each of which a judge shall be elected, who, during his continuance in office, shall reside and be a conservator of the peace within the circuit for which he shall have been elected.

SEC. 5. The circuit court shall exercise a superintending control over the county courts and over justices of the peace in each county in their respective circuits, and shall have power to issue all the necessary writs to carry into effect their general and specific powers.

SEC. 6. Until the general assembly shall deem it expedient to establish courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the supreme court, in such manner as may be prescribed by law.

SEC. 7. The qualified voters of this state shall elect the judges of the supreme court. The judges of the supreme court shall be at least thirty years of age; they shall hold their offices during the term of eight years from the date of their commissions, and until their successors are elected and qualified.

Immediately after such election by the people, the lieutenant-governor and speaker of the house of representatives shall proceed by lot to divide the judges into three classes. The commissions of the first class shall expire at the end of four years, of the second class at the end of six years, and of the third class at the end of eight years, so that one-third of the whole number shall be chosen every four, six and eight years.

SEC. 8. The qualified voters of each judicial district shall elect a circuit judge. The judges of the circuit court shall be at least twenty-five years of age, and shall be elected for the term of four years from the date of their commissions, and shall serve until their successors are elected and qualified.

SEC. 9. The supreme court shall appoint its own clerk or clerks for the term of four years; the qualified voters of each county shall elect a clerk of the circuit court for the respective counties, who shall hold his office for the term of two years and until his successor is elected and qualified, and courts of chancery, if any be established, shall appoint their own clerks.

SEC. 10. The judges of the supreme court and circuit courts shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be diminished during the time for which they are elected; they shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this state or the United States. The attorney-general, the state's attorneys and clerks of the supreme and circuit courts and courts of chancery, if any such be established, shall receive for their services such salaries, fees and perquisites of office as shall, from time to time, be fixed by law.

SEC. 11. There shall be established in each county in the state a court to be holden by the justices of the peace—a court called the county court—which shall have jurisdiction in all matters relating to taxes, disbursements of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties.

SEC. 12. The qualified voters of each county shall elect a county and probate judge, who shall hold his office for two years and until his successor is elected and qualified. He shall, in addition to the duties that may be required of him by law as a presiding judge of the county court, be a judge of the court of probate, and have such jurisdiction in matters relating to the estates of deceased persons, executors, administrators and guardians as may be prescribed by law, until otherwise directed by the general assembly.

SEC. 13. The presiding judge of the probate and county court and justices of the peace shall receive for their services such compensation and fees as the general assembly may, from time to time, by law direct.

SEC. 14. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been counsel, or have presided in any inferior court, except by consent of all the parties. In case all or any of the judges of the supreme court shall be thus disqualified from presiding on any cause or causes, the court or judges thereof shall certify the same to the governor of the state, and he shall immediately commission, specially, the requisite number of men of law knowledge for the trial and determination thereof. The same course shall be pursued in the circuit and inferior courts as prescribed in this section for cases of the supreme court. Judges of the circuit courts may temporarily exchange circuits or hold courts for each other under such regulations as may be pointed out by law. Judges shall not charge juries with regard to matter of fact, but may state the testimony and declare the law.

SEC. 15. The qualified voters thereof shall elect an attorney for the state for each judicial circuit established by law, who shall continue in office two years and until his successor is elected and qualified, and reside within the circuit for which he was elected at the time of and during his continuance in office. In all cases where an attorney for the state of any circuit fails to attend and prosecute according to law, the court shall have power to appoint an attorney *pro tempore*.

SEC. 16. The qualified voters of this state shall elect an attorney-general, whose salary shall be the same as that of circuit judge, who shall be learned in the law, who shall be at least thirty years of age, and shall hold his office for the term of four years from the date of his commission and until his successor is elected and qualified, and whose duty it shall be to prosecute the state's pleas before the supreme court, and give his opinion in writing on all questions of law or equity when required by the governor or other officer of the state, and perform such other duties as may be prescribed by law.

SEC. 17. All writs and other process shall run in the name of the "State of Arkansas," and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

SEC. 18. The qualified voters residing in each township shall elect the justices of the peace for each township. For every one hundred voters there may be elected one justice of the peace. Provided, that each township, however small, shall have two justices of the peace. Justices of the peace shall be elected for the term of two years, and shall hold their offices until their successors are elected and qualified; shall be commissioned by the governor, and shall reside in the township for which they are elected during their continuance in office. The first election for justices of the peace shall take place on the second Monday in March, 1864, and the second election on the first Monday in August, 1866, and at the regular elections thereafter. Justices of the peace, individually, or two or more of them jointly, shall have original jurisdiction in cases of bastardy and in all matters of contract and actions for the recovery of fines and forfeiture where the amount claimed does not exceed two hundred dollars, and concurrent jurisdiction with circuit courts where the amount claimed exceeds one hundred dollars and does not exceed two hundred dollars, and such jurisdiction as may be provided by law in actions *ex delicto* where the damages claimed do not exceed one hundred dollars, and prosecutions for assault and battery and other penal offenses less than felony punishable by fine only. Every action cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the peace of the township where the defendant resides. They may also sit as examining courts, and commit, discharge or recognize any person charged with any crime of any grade. For the foregoing purposes, they shall have power to issue all necessary process. They shall also have power to bind to keep the peace or for good behavior.

SEC. 19. The qualified voters of each township shall elect one constable for the term of two years, who shall hold his office till his successor is elected and qualified, who shall, during his continuance in office, reside in the township for which he was elected. Incorporated towns may have a separate constable and a separate magistracy.

SEC. 20. The qualified voters of each county shall elect one sheriff, one coroner and one county surveyor for the term of two years and until their successors are elected. They shall be commissioned by the governor, reside in their respective counties during their continuance in office and be disqualified for the office a second term if it should appear that they, or either of them, are in default for moneys collected by virtue of their respective offices.

ARTICLE VIII.

GENERAL PROVISIONS—EDUCATION.

SECTION 1. Knowledge and learning generally diffused throughout a community being essential to the preservation of a free government, and diffusing the opportunities and advantages of education through the various parts of the state being highly conducive to this end, it shall be the duty of the general assembly to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this state for the use of schools, and to apply any funds which may be raised from such lands, or from any other source, to the accomplishment of the object for which they are, or may be, intended. The general assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific and agricultural improvement by allowing rewards and immunities for the promotion and improvement of arts, science, commerce, manufactures and natural history, and countenance and encourage the principles of humanity, industry and morality.

SEC. 2. Treason against the state shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or his own confession in open court.

SEC. 3. No person who denies the being of a God shall hold any office in the civil department of this state or be allowed his oath in any court.

SEC. 4. No money shall be drawn from the treasury but in consequence of an appropriation by law, nor shall any appropriation of money for the support of an army be made for a longer term than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published with the promulgation of the laws.

SEC. 5. Absence on business of this state or of the United States, or on a visit or necessary private business, shall not cause a forfeiture of a residence once obtained.

SEC. 6. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

SEC. 7. Internal improvements shall be encouraged by the government of this state, and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals and navigable waters; and it shall also be their duty to provide by law for an equal, systematic and economical application of the funds which may be appropriated to these objects.

SEC. 8. Returns for all elections for officers who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state, except, in the election of 1864, they may be made as directed in the schedule appended to this constitution.

SEC. 9. Within five years after the adoption of this constitution the laws, civil and criminal, shall be revised, digested and arranged and promulgated in such manner as the general assembly may direct, and a like revision, digest and promulgation shall be made within every subsequent period of ten years.

SEC. 10. In the event of the annexation of any territory to this state by a cession from the United States, laws may be passed extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, anything in this constitution to the contrary notwithstanding.

SEC. 11. Imprisonment for debt shall not be allowed in this state except when an allegation of fraud on the part of the debtor shall be clearly proved.

SEC. 12. Any person who shall, after the adoption of this constitution, fight a duel or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of suffrage and of the right of holding any office of honor or profit in this state, and shall be punished otherwise in such manner as is, or may be, prescribed by law.

ARTICLE IX.

REVENUE.

SECTION 1. All revenue shall be raised by taxation, to be fixed by law.

SEC. 2. All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the state. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value. Provided, the general assembly shall have the power to tax merchants, hawkers, peddlers and privileges in such manner as may from time to time be prescribed by law; and provided, further, that no other or greater amount of revenue shall at any time be levied than required for the necessary expenses of the government, unless by a concurrence of two-thirds of both houses of the general assembly.

SEC. 3. No poll-tax shall be assessed for other than county purposes.

SEC. 4. No other or greater tax shall be levied on the productions or labor of the country than may be required for expenses of inspection.

SCHEDULE.

SECTION 1. In order that civil government may be in full operation and effect at the earliest day possible, it is further ordained and provided that a general vote on the ratification of the constitution and ordinance of this convention and a general election shall be taken and held throughout the state, as far as practicable, on the second Monday of March next, as follows, to wit: Any number of persons, being white male citizens of the state over the age of twenty-one years, at the county seat of any county, or (in case of volunteer soldiers in the federal army) at the camp of their respective companies, having first taken the oath prescribed in the president's proclamation of December 8, 1863, before any justice of the peace or other person authorized to administer an oath within the county in which they reside, or within which they are encamped, may appoint a commissioner of elections, with power to appoint such election judges as may be necessary, who shall also be an enrolling officer for said county or company, who shall proceed as follows, to wit: Said commissioners shall prepare an enrolling and poll-book, to which shall be appended the constitution, ordinances and schedule of this convention. One column shall then be headed with the oath contained in said proclamation of the president; another column headed, "Constitution and ordinances ratified; another column, "Constitution and ordinances rejected." Other columns shall be arranged so that a vote may be taken for all officers to be voted for within the county or company where the election is proposed to be held. Said commissioner shall then take the oath aforesaid before any justice of the peace or other officer authorized to administer oaths, and enroll his own name at the head of the column, under the said oath written out in full. The said commissioner shall then, on the said second Monday of March next, within usual election hours, proceed to hold an election as follows, *vide voce*; and provided, also, that said commissioner may keep the polls open for three days, to wit: Every white male citizen over the age of twenty-one years, of the county or (in case of a military company) of the state, presenting himself to vote, and not being included in the exceptions contained in the said proclamation, shall take the oath contained in said proclamation, administered by any justice of the peace or other officer authorized to administer oaths; and when his name has been thereafter duly enrolled or subscribed in the proper column, the commissioner shall cause his vote to be recorded, first upon the question of the constitution and ordinances, and then in the election of all officers to be voted for.

SEC. 2. That within five days after the holding of said election said commissioner shall foot up the said vote and certify the result over his signature as commissioner. He shall then make a duplicate of said book (except that the constitution and ordinances of this convention need not be appended to the copy), and forward the said copy to Little Rock, addressed to the provisional government. The original book shall be preserved by said commissioner and deposited by him as soon as the counties are organized with the clerk of the county wherein the election is held, or (in case of soldiers) in the county wherein the voters reside.

SEC. 3. Within ten days after the receipt of the said enrolling and election return-books by the provisional governor, it shall be his duty, with the assistance of the secretary of state, to examine the same and declare the result by proclamation, as follows, to wit:

First. Whether the constitution and ordinances of this convention have been adopted or rejected within the meaning of the president's proclamation.

Second. He shall announce the whole vote polled for or against said constitution and ordinances.

Third. He shall declare what persons are elected to the various offices throughout the state, except that of governor and lieutenant-governor of state, deciding the result by plurality.

SEC. 4. All persons thus declared to be elected state officers shall enter upon the discharge of their respective offices as soon thereafter as they take and subscribe an oath before any justice of the peace, or other officer authorized to administer oaths, as follows: That they will faithfully perform the duties of their respective offices; that they will support the constitution and laws of the state and of the United States; and said oath, in case of state officers, shall be filed in the office of the secretary of state; and, in case of county officers, they shall enter upon the duties of their respective offices immediately after the election upon filing said oath with the county commissioners.

SEC. 5. At the first session of the legislature, and during the first week of the session, the said provisional governor shall place the said return books before that body, who shall declare the result as to the election of governor and lieutenant-governor and secretary of state, who, before entering upon the duties of their respective offices, shall take the oath herein prescribed for other officers.

SEC. 6. It is also further ordained and declared that in counties wherein, for any cause, elections are not held on the said second Monday of March next, the same may be held for the several local officers provided for in the constitution, ordinances and schedule of this convention in the same manner as hereinbefore described, at any time thereafter, till the whole state is fully organized and represented.

SEC. 7. The officers to be voted for in this election are governor, lieutenant-governor, secretary of state, auditor, treasurer, attorney-general, three judges of the supreme court, nine circuit judges and nine district attorneys (according to act of January 15, 1861), county judges, clerks, sheriffs, coroners, constables, justices of the peace and all other officers provided for in the constitution and ordinances of this convention, or which may exist by law, and members of the legislature, according to the ratio or apportionment of senatorial districts in force in the year 1860, and members to congress in districts Nos. 1 and 2, according to the act

approved January 19, 1861 (no election being ordered in district No. 3, this convention recognizing the election of Colonel James M. Johnson as the representative from that district). And it is further hereby declared that all laws in force in this state on the fourth day of March, 1861, are still in force, not inconsistent with the provisions of this constitution, and which have not expired by limitation therein contained.

JOHN MCCOY,

President of the Convention, and Delegate from Newton County.

LUTHER C. WHITE,
Crawford County.

C. A. HARPER,
Crawford County.

JOHN AUSTIN,
Crawford County.

JOSIAH HARRELL,
Crawford County.

HARMON L. HOLLEMAN,
Sebastian County.

JNO. R. SMOOT,
Sebastian County.

RANDOLPH D. SWINDELL,
Sebastian County.

G. W. SEAMANS,
Madison County.

JAMES T. SWAFFORD,
Saline County.

W. HOLLEMAN,
Saline County.

JOHN M. DEMINT,
Saline County.

ENOCH H. VANCE,
Saline County.

MILES L. LANGLEY,
Clark County.

J. M. STAPP,
Clark County.

C. T. JORDAN,
Clark County.

JOHN BURTON,
Clark County.

JOHN C. PRIDDY,
Montgomery County.

REUBEN LAMB,
Montgomery County.

E. D. AYRES,
Pulaski County.

T. D. W. YONLEY,
Pulaski County.

E. L. MAYNARD,
Pulaski County.

WILLIAM STOUT,
Pope County.

BURKE JOHNSON,
Yell County.

ELIAS G. COOK,
Yell County.

L. D. CANTRELL,
Pike County.

WILLIS JONES,
Pike County.

JAMES A. BUTLER,
Phillips County.

T. M. JACKS,
Phillips County.

HORACE B. ALLIS,
Jefferson County.

JOHN BOX,
Jackson County.

CALVIN C. BLISS,
Independence County.

A. B. FRYREAR,
St. Francis County.

LEMUEL HELMS,
Sevier County.

R. L. TURNER,
Ouachita County.

THOMAS J. YOUNG,
Polk County.

JAMES HUEY,
Polk County.

ANDREW G. EVANS,
Dallas County.

R. H. STANFIELD,
Dallas County.

WILLIAM COX,
Drew County.

L. DUNSCOMB,
Conway County.

ATTEST:

ROBERT J. T. WHITE, *Secretary.*

JAMES R. BERRY, *Assistant Secretary.*

THE
CONSTITUTION
OF THE
STATE OF ARKANSAS
OF
1868.

THE
CONSTITUTION
OF THE
STATE OF ARKANSAS,

As Adopted by the Convention February 11, 1868.

PREAMBLE.

We, the people of Arkansas, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this constitution:

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it; but the paramount allegiance of every citizen is due to the federal government in the exercise of all its constitutional powers as the same may have been or may be defined by the supreme court of the United States; and no power exists in the people of this or any other state of the federal union to dissolve their connection therewith, or perform any act tending to impair, subvert or resist the supreme authority of the United States. The constitution of the United States confers full powers on the federal government to maintain and perpetuate its existence; and whensoever any portion of the states, or the people thereof, attempt to secede from the federal union, or forcibly resist the execution of its laws, the federal government may by warrant of the constitution employ armed force in compelling obedience to its authority.

SEC. 2. The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions is one of the invaluable rights of man, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right. In all criminal prosecutions for libel the truth may be given in evidence to the jury, and, if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

SEC. 3. The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color or previous condition.

SEC. 4. The citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives and to petition for the redress of grievances and other proper purposes.

SEC. 5. The citizens of this state shall have the right to keep and bear arms for their common defense.

SEC. 6. The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law.

SEC. 7. Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted; nor witnesses be unreasonably detained.

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OF THE
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SEC. 7. Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted; nor witnesses be unreasonably detained.

SEC. 8. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or judicial district wherein the crime shall have been committed—which county or district shall have been previously ascertained by law—and to be informed of the nature and cause of the accusation against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

SEC. 9. No person shall be held to answer a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment or in cases of petit larceny, assault, assault and battery, affray, vagrancy and such other minor cases as the general assembly shall make cognizable by justices of the peace, or arising in the army or navy of the United States, or in the militia when in actual service in time of war or public danger; and no person, after having been once acquitted by a jury for the same offense, shall be again put in jeopardy of life or liberty; but, if in any criminal prosecution the jury be divided in opinion, the court before which the trial may be had may, in its discretion, discharge the jury and commit or bail the accused for trial at the same or next term of said court; nor shall any person be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses—murder and treason—when the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require.

SEC. 10. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformably to the laws.

SEC. 11. Treason against the state shall only consist in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court.

SEC. 12. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

SEC. 13. No bill of attainder, *ex post facto* law, nor any law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 14. No person shall be imprisoned for debt in this state, but this shall not prevent the general assembly from providing for imprisonment or holding to bail persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of debts or liabilities.

SEC. 15. Private property shall not be taken for public use without just compensation therefor.

SEC. 16. The military shall be subordinate to the civil power. No standing army shall be kept up in this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

SEC. 17. Suits may be brought by or against the state in such manner and in such courts as may be by, law provided.

SEC. 18. The general assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

SEC. 19. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influence from bribery, tumult or other improper conduct.

SEC. 20. Foreigners who are or may become *bona fide* residents of this state shall be secured the same rights in respect to the acquisition, possession, enjoyment and descent of property as are secured to native-born citizens.

SEC. 21. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the state. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion; and the mode of administering an oath or affirmation shall be such as shall be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

SEC. 22. Any person who shall, after the adoption of this constitution, fight a duel or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, either in this state or elsewhere, shall thereby be deprived of the right of holding any office of honor or profit in this state, and shall be forever disqualified from voting at any election, and shall be punished otherwise in such manner as may be prescribed by law.

SEC. 23. Religion, morality and knowledge being essential to good government, the general assembly shall pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

SEC. 24. All lands in this state are declared to be allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of land for a longer period than twenty-one years hereafter made, in which shall be reserved any rent or service of any kind, shall be held a conveyance in fee to the lessee.

SEC. 25. The action of the convention of the State of Arkansas which assembled in the City of Little Rock on the fourth (4th) day of March, A. D. one thousand eight hundred and sixty-one (1861), was and is null and void. All the action of the State of Arkansas under the authority of said convention, of its ordinances or its constitution, whether legislative, executive, judicial or military, was and is hereby declared null and void; and no debt or liability of the State of Arkansas incurred by the action of said convention or of the general assembly, or any department of the government under the authority of either, shall ever be recognized as obligatory. Provided, that this ordinance shall not be so construed as to effect the rights of private individuals arising under contracts between the parties, or to change county boundaries or county seats, or to make invalid the acts of justices of the peace or other officers in their authority to administer oaths or take and certify the acknowledgment of deeds of conveyance or other instruments of writing, or in the solemnization of marriage.

ARTICLE II.

BOUNDARIES.

We do declare and establish, ratify and confirm the following as the permanent boundaries of said State of Arkansas, that is to say: Beginning at the middle of the main channel of the Mississippi River on the parallel of thirty-six (36) degrees north latitude; running from thence west with the said parallel of latitude to the Saint Francis River; thence up the middle of the main channel of said river to the parallel of thirty-six (36) degrees thirty (30) minutes north; from thence west with the boundary line of the State of Missouri to the south-west corner of that state; and thence to be bounded on the west to the north bank of Red River, as by acts of congress and treaties heretofore defining the western limits of the Territory of Arkansas; and to be bounded on the south side of Red River by the boundary line of the State of Texas to the north-west corner of the State of Louisiana; thence east with the Louisiana state line to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of said river, including an island in said river, known as "Belle Point Island," to the thirty-sixth (36th) degree of north latitude, the place of beginning.

ARTICLE III.

The seat of government shall be at Little Rock, where it is now established.

ARTICLE IV.

SECTION 1. The powers of government are divided into three departments—the legislative, the executive and the judicial.

SEC. 2. No person belonging to one department shall exercise the powers properly belonging to another, excepting in the cases expressly provided in this constitution.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power in this state shall be vested in a general assembly, which shall consist of a senate and a house of representatives.

SEC. 2. The general assembly shall meet every two years on the first Monday of January, at the seat of government, until altered by law; but the first general assembly elected after the adoption of this constitution shall meet on the second (2d) day of April. A. D. one thousand eight hundred and sixty-eight (1868).

SEC. 3. The house of representatives shall consist of members chosen every second year by the qualified electors of the several districts.

SEC. 4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years and have been one year a resident of this state; who shall not be a male citizen of the United States; who shall not at the time of his election have an actual residence in the district he may be chosen to represent, and who shall not be a qualified elector as provided in this constitution.

SEC. 5. The senate shall consist of members chosen every fourth year by the qualified electors of the several districts.

SEC. 6. No person shall be a member of the senate who shall not have attained the age of twenty-five years and have been one year a resident of this state; who shall not be a male citizen of the United States; who shall not at the time of his election have an actual residence in the district he may be chosen to represent, and who shall not be a qualified elector as provided in this constitution.

SEC. 7. The number of members composing the senate shall be twenty-six (26), and of the house of representatives eighty-two (82).

SEC. 8. The general assembly shall provide by law for an enumeration of the inhabitants of this state in the year one thousand eight hundred and seventy-five (1875), and every tenth (10th) year thereafter; and the first general assembly elected after each enumeration so made, and also after each enumeration made by the authority of the United States, may rearrange the senatorial and representative districts according to the number of inhabitants as ascertained by such enumeration. Provided, that there shall be no apportionment other than that made in this constitution until after the enumeration to be made in the year one thousand eight hundred and seventy-five (1875).

SEC. 9. Senators shall be chosen at the same time and in the same manner that members of the house of representatives are required to be. Senatorial districts shall be composed of convenient contiguous territory, and no representative district shall be divided in the formation of a senatorial one. The senatorial districts shall be numbered in regular series, and the term of senators chosen for the districts designated by odd numbers shall expire in two (2) years, and the term of senators chosen for the districts designated by even numbers shall expire in four (4) years; but thereafter senators shall be chosen for the term of four (4) years, excepting when an enumeration of the inhabitants of the state is made, in which case, if a rearrangement of the senatorial districts is made, the regulation above stated shall govern the term of office.

SEC. 10. Removals of senators and representatives from their respective districts shall be deemed a vacation of their office.

SEC. 11. No person holding any office under the United States, or this state, or any county office, except postmasters, notaries public, officers of the militia and township officers shall be eligible to or have a seat in either branch of the general assembly; and all votes given for any such person shall be void.

SEC. 12. Senators and representatives shall, in all cases (treason, felony or breach of the peace excepted), be privileged from arrest during the session of the general assembly. They shall not be subject to any civil process during the session of the general assembly or for fifteen days next before the commencement and next after the termination of each session. And they shall not be questioned in any other place for remarks made in either house.

SEC. 13. A majority of the members of each house shall constitute a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

SEC. 14. Each house shall choose its own officers, determine the rules of its proceedings, judge of the qualifications, election and return of its members, and may, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause, nor for any cause known to his constituents at the time of his election. The reasons for any such expulsion shall be entered upon the journal with the names of the members voting thereon.

SEC. 15. The general assembly shall prescribe by law the manner in which the state printing shall be executed and the accounts rendered therefor, and shall prohibit all charges for constructive labor. They shall not rescind or alter any contract for such printing, or release the person or persons taking the same, or his or their securities, from the performance of any of the provisions of such contract.

SEC. 16. Each house shall keep a journal of its proceedings, and publish the same, excepting such parts as may require secrecy. The yeas and nays of the members of either house upon any question shall be entered on the journal at the request of five members. Any member of either house may dissent and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

SEC. 17. In all elections by either house, or in joint convention, the votes shall be given *viva voce*. All votes on nominations to the senate shall be taken by yeas and nays, and published with the journal of its proceedings.

SEC. 18. The doors of each house shall be open, unless the public welfare requires secrecy. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the general assembly may then be in session.

SEC. 19. Bills may originate in either house of the general assembly, but all bills for raising revenue shall originate in the house of representatives, though the senate may propose amendments, as on other bills.

SEC. 20. No portion of the public funds or property shall ever be appropriated by virtue of any resolution. No appropriation shall be made except by a bill duly passed for that purpose.

SEC. 21. Every bill and joint resolution shall be read three times, on different days, in each house before the final passage thereof, unless two-thirds of the house where the same is pending shall dispense with the rules. No bill or joint resolution shall become a law without the concurrence of a majority of all the members voting. On the final passage of all bills the vote shall be taken by yeas and nays and entered on the journal.

SEC. 22. No act shall embrace more than one subject, which shall be embraced in its title. No public act shall take effect or be in force until ninety (90) days from the expiration of the session at which the same is passed, unless it is otherwise provided in the act.

SEC. 23. No law shall be revised, altered or amended by reference to its title only, but the act revised and the section or sections of the act as altered or amended shall be enacted and published at length.

SEC. 24. No new bill shall be introduced into either house during the last three days of the session without the unanimous consent of the house in which it originated.

SEC. 25. The general assembly, at its first session, shall provide suitable laws for the registration of qualified electors and for the prevention of frauds in elections.

SEC. 26. The general assembly shall provide for the speedy publication of all statute laws of a public nature, and of such judicial decisions as it may deem expedient. All laws and judicial decisions shall be free of publication by any person.

SEC. 27. The style of the laws of the state shall be: "Be it enacted by the general assembly of the State of Arkansas."

SEC. 28. The general assembly may enact laws providing for county, township or precinct governments.

SEC. 29. It shall be the duty of the general assembly, from time to time, as circumstances may require, to frame and adopt a penal code, founded on principles of reformation.

SEC. 30. The general assembly shall not change the venue in any criminal or penal prosecution, but shall provide for the same by general laws.

SEC. 31. The general assembly may pass laws authorizing appeals in criminal or penal cases and regulating the right of challenge of jurors therein.

SEC. 32. The general assembly shall direct by law when and how juries shall be selected from judicial districts in criminal and civil cases.

SEC. 33. The general assembly shall regulate by law by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 34. The general assembly may declare the cases in which any office shall be deemed vacant, and also for the manner of filling the vacancy where no provision is made for that purpose in this constitution.

SEC. 35. Every bill and concurrent resolution, except of adjournment, passed by the general assembly shall be presented to the governor for approval before it becomes a law. If he approve, he shall sign it; if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon its journal, and reconsider it. On such reconsideration, if a majority of the members elected agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall be reconsidered. If approved by a majority of the members elected to that house it shall become a law. In such cases the vote of both houses shall be determined by yeas and nays, and the names of members voting for and against the bill

shall be entered on the journal of each house respectively. If any bill be not returned by the governor within three (3) days (Sundays excepted) after it has been presented to him, the same shall become a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not become a law. The governor may approve, sign and file in the office of the secretary of state, within three (3) days after the adjournment of the general assembly, any act passed during the last three (3) days of the session, and the same shall become a law.

SEC. 36. Each house may punish by imprisonment, during its session, any person not a member who shall be guilty of any disorderly or contemptuous behavior in their presence; but no such imprisonment shall at any time exceed twenty-four (24) hours.

SEC. 37. No citizen of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless the same is done by the law of the land, or the judgment of his peers, except as hereinafter provided. There shall be neither slavery nor involuntary servitude, either by indentures, apprenticeships, or otherwise, in the state, except for the punishment of crime, whereof the party shall have been duly convicted.

SEC. 38. The general assembly shall have no power to make compensation for emancipated slaves.

SEC. 39. The general assembly shall have no power to grant divorces, to change the names of individuals, or to direct the sale of estates belonging to infants or other persons laboring under legal disabilities, by special legislation; but, by general laws, shall confer such powers on the courts of justice.

SEC. 40. The general assembly shall not authorize, by private or special law, the sale or conveyance of any real estate belonging to any person, or vacate or alter any road laid out by legal authority, or any street in any city or village, or in any recorded town plat; but shall provide for the same by general laws.

SEC. 41. The general assembly shall not authorize any lottery, and shall prohibit the sale of lottery tickets.

SEC. 42. In case of a contested election, only the claimant decided entitled to the seat, in either house in which the contest may take place, shall receive from the state per diem, compensation and mileage.

SEC. 43. No collector, holder or disburser of public moneys shall have a seat in the general assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for and paid over, as provided by law, all sums for which he is liable.

SEC. 44. The general assembly shall have power to alter and regulate the jurisdiction and proceedings in law and equity, subject to the provisions of this constitution.

SEC. 45. The general assembly shall direct by law in what manner and in what courts suits may be brought by and against the state.

SEC. 46. It shall be the duty of the general assembly to make adequate provision for the maintenance of paupers throughout the state.

SEC. 47. The general assembly shall not have power to authorize any municipal corporation to pass any laws contrary to the general laws of the state, or to levy any tax on real or personal property to a greater extent than two (2) per centum of the assessed value of the same.

SEC. 48. The general assembly shall pass no special act conferring corporate powers. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Dues from corporations shall be secured by such individual liability of the stockholders, and other means, as may be prescribed by law; but in all cases each stockholder shall be liable over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals. No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men in a court of record, as shall be prescribed by law.

SEC. 49. The general assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such power.

SEC. 50. All corporations with banking and discounting privileges shall, preparatory to issuing bills as currency, deposit the bonds of this state, equal in amount to the capital stock of such corporation, with the auditor of the state, who shall not permit an issue of circulation exceeding eighty per centum of the amount of bonds so deposited, such circulation being receivable for all taxes and dues to the state, and the individual liability of stockholders shall be as hereinbefore directed. Provided, that corporations chartered or existing under any act of the congress of the United States shall be exempted from these provisions.

SEC. 51. The general assembly, on the day of final adjournment, shall adjourn at twelve o'clock at noon.

ARTICLE VI.

EXECUTIVE DEPARTMENT.

SECTION 1. The executive department of this state shall consist of a governor, lieutenant-governor, secretary of state, auditor, treasurer, attorney-general and superintendent of public instruction—all of whom shall hold their several offices for the term of four years, and until their successors are elected and qualified. They shall be chosen by the qualified electors of this state at the time and places of choosing the members of the general assembly.

SEC. 2. The supreme executive power of this state shall be vested in the governor.

SEC. 3. No person shall be eligible to the office of governor or lieutenant-governor who shall not have attained the age of twenty-five years; who shall not have been five years a citizen of the United States; who shall not, at the time of his election, have had an actual residence in this state for one year next preceding his election, and who shall not be a qualified elector as prescribed in this constitution.

SEC. 4. In elections for governor and lieutenant-governor, the person having the highest number of votes shall be declared elected. But, in case that two or more persons shall have an equal and the highest number of votes for governor or lieutenant-governor, the general assembly shall, by joint vote, choose one of such persons. The governor shall be commander-in-chief of the military and naval forces of the state, and may call out such forces to execute the laws, suppress insurrections, repel invasions or preserve the public peace. He shall transact all necessary business with other officers of the state government, and may require information in writing of the officers of the executive department upon any subject pertaining to the duties of their respective offices.

SEC. 5. It shall be the duty of the governor to see that the laws are faithfully executed.

SEC. 6. He may convene the legislature on extraordinary occasions.

SEC. 7. He shall give to the general assembly, and at the close of his official term to the next general assembly, information by message concerning the condition of the state, and recommend such means to their consideration as he may deem expedient.

SEC. 8. He may convene the general assembly at some other place when the seat of government becomes dangerous from the prevalence of disease or the presence of a common enemy.

SEC. 9. He may grant reprieves, pardons and commutations after conviction for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper; subject, however, to such regulations as may be prescribed by law relative to the manner of applying for pardons. Upon conviction for treason he may suspend execution of the sentence until the matter shall be reported to the general assembly at its next session, when the general assembly shall either pardon, commute the sentence, direct the execution of the same, or grant a further reprieve. The governor shall communicate to the general assembly, at each session, information concerning each case of pardon, reprieve or commutation granted, and the reasons therefor.

SEC. 10. In case of the impeachment of the governor, his removal from office, death, resignation, inability or removal from the state, the powers and duties of the governor shall devolve upon the lieutenant-governor during the residue of the term or until the disabilities of the governor are removed.

SEC. 11. During a vacancy in the office of governor, if the lieutenant-governor resign, be impeached, displaced, absent from the state, or incapable of acting, the president *pro tempore* of the senate shall act as governor until the vacancy be filled or the disability cease.

SEC. 12. The lieutenant-governor shall, by virtue of his office, be president of the senate, and when there is an equal division he shall give the casting vote.

SEC. 13. No member of congress or any other person holding any office under the United States or this state shall execute the office of governor.

SEC. 14. The lieutenant-governor and the president of the senate *pro tempore*, while performing the office of governor, shall receive the same compensation as the governor.

SEC. 15. All official acts of the governor—his approval of the laws excepted—shall be authenticated by the great seal of the state, which seal shall be kept by the secretary of state.

SEC. 16. The governor shall, by and with the advice and consent of the senate, appoint a convenient number of notaries public, not to exceed six for each county, who shall discharge such duties as are now, or as may hereafter be, prescribed by law.

SEC. 17. All commissions issued to persons holding office under the provisions of this constitution shall be in the name and by the authority of the people of the State of Arkansas, sealed with the great seal of the state, signed by the governor and countersigned by the secretary of state.

SEC. 18. The governor, chief justice, secretary of state, treasurer, auditor, attorney-general and superintendent of public instruction shall severally reside and keep all public records, books, papers and documents which may pertain to their respective offices at the seat of government.

SEC. 19. The returns of every election for governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney-general and superintendent of public instruction shall be sealed up and transmitted to the seat of government by the returning officers and directed to the presiding officer of the senate, who, during the first week of the session, shall open and publish the same in presence of the members then assembled. The person having the highest number of votes shall be declared elected, but, if two or more shall have the highest and equal number of votes for the same office, one of them shall be chosen by a joint vote of both houses. Contested elections shall likewise be determined by both houses of the general assembly in such manner as is or may hereafter be prescribed by law.

SEC. 20. The secretary of state shall keep a fair record of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the general assembly, and shall perform such other duties as are now or may hereafter be prescribed by law.

SEC. 21. The auditor, treasurer, attorney-general and superintendent of public instruction shall perform such duties as are now or may hereafter be prescribed by law.

SEC. 22. In case of the death, impeachment, removal from the state or other disability of the secretary of state, treasurer, auditor, attorney-general and superintendent of public instruction, the vacancies in their several offices thus occasioned shall be filled by appointment of the governor, which appointment shall be made for the unexpired terms of said officers, or until said disabilities are removed, or until elections are held to fill said vacancies.

SEC. 23. Until the general assembly shall otherwise provide, the governor shall appoint a suitable person who shall be styled commissioner of public works and internal improvements, who shall hold his office for the term of four years and until his successor is duly commissioned and qualified. It shall be the duty of the commissioner of public works and internal improvements to superintend all public works which may be carried on by the state, and have a supervising control over all internal improvements in which the state is interested; and, until otherwise provided by the general assembly, he shall be *ex officio* commissioner of

immigration and of state lands, and shall perform such other duties as may be prescribed by law. He shall receive for his services the same salary as provided by law for the auditor of state.

SEC. 24. The officers of the executive department mentioned in this article shall at stated times receive for their services a compensation to be established by law, which shall not be diminished during the period for which they shall have been elected or appointed.

SEC. 25. The officers of the executive department and judges of the supreme court shall not be eligible, during the period for which they may be elected or appointed to their respective offices, to any position in the gift of the qualified electors or of the general assembly of this state.

SEC. 26. The returns of every election for state, county and judicial officers not herein provided for shall be sealed up and transmitted to the seat of government by the returning officers and directed to the secretary of state, who shall open and publish the same, and the persons so elected shall be duly commissioned by the governor.

ARTICLE VII.

JUDICIARY.

SECTION 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts and such other courts inferior to the supreme court as the general assembly may from time to time establish.

SEC. 2. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members thereof. The chief justice shall preside, and the secretary of state shall act as clerk of the court. Provided, that in case of the trial of either of them the person appointed temporarily to perform the duties of the office shall act.

The governor and all other civil officers under this state shall be liable to impeachment for any misconduct or maladministration of their respective offices; but judgment in such cases shall not extend farther than to removal from office and disqualification to hold any office of honor, trust or profit under this state. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial and judgment according to law.

SEC. 3. Two terms of the supreme court shall be held at the seat of government annually. Provided, that the general assembly may provide by law for holding said court at three other places. The supreme court shall consist of one chief justice, who shall be appointed by the governor, by and with the advice and consent of the senate, for the term of eight years, and four associate justices, who shall be chosen by the qualified electors of the state at large for the term of eight years. Provided, that two of the associate justices first chosen under this constitution shall serve for four years after the next general election and two of them for eight years after said election, said times to be determined by lot; but thereafter the associate justices shall be chosen for the full term.

SEC. 4. The supreme court shall have general supervision and control over all inferior courts of law and equity. It shall have power to issue writs of error, *supersedeas*, *certiorari*, *habeas corpus*, *mandamus*, *quo warranto* and other remedial writs, and to hear and determine the same. Final judgments in the inferior courts may be brought by writ of error or by appeal into the supreme court in such manner as may be prescribed by law.

SEC. 5. The inferior courts of the state as now constituted by law, except as hereinafter provided, shall remain with the same jurisdiction as they now possess. Provided, that the general assembly may provide for the establishment of such inferior courts, changes of jurisdiction or abolition of existing inferior courts as may be deemed requisite. The judges of the inferior courts herein provided for, or of such as may hereafter be established by law, shall be appointed by the governor, by and with the advice and consent of the senate, for the term of six years and until such time as the general assembly may otherwise direct. Provided, that the general assembly shall not interfere with the term of office of any judge.

SEC. 6. All writs and other processes shall run in the name of the State of Arkansas, and bear teste and be signed by the clerks of the respective courts from which they issue. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas."

SEC. 7. No judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or in which he may have been counsel or have presided in any inferior court.

SEC. 8. In case all or any of the judges of the supreme court shall be disqualified from presiding on any cause or causes, the court or judges thereof shall certify the same to the governor of the state, and he shall immediately commission, specially, the required number of men learned in the law for the trial and determination thereof.

SEC. 9. Whenever at ten o'clock A. M. of the second day of any term of the inferior courts of this state the judge thereof is not present, or if present, and he can not for any cause properly preside at the trial of any case then pending therein, the attorneys of said court then present may elect a special judge, who shall preside during the trial of such case or cases, or shall hold said court until the appearance of the regular judge thereof. The proceedings in such cases shall be entered at large upon the record.

SEC. 10. The judges of the inferior courts may temporarily exchange circuits or hold courts for each other under such regulations as may be prescribed by law.

SEC. 11. Judges shall not charge juries with regard to matters of fact, but shall declare the law. In all trials by jury the judges shall give their instructions and charges in writing; and, if the trial is by the court, he shall reduce to writing his findings upon the facts in the case, and shall declare the law in the same manner he is required to do when instructing juries.

SEC. 12. Any judge whose appointment or election is herein provided for shall be at least twenty-five years of age, a qualified elector of this state, and shall have been for one year an actual resident of the state, and shall reside in the circuit or district to which he may be appointed or elected.

SEC. 13. The judges of the supreme and inferior courts shall, at stated times, receive a compensation for their services as is now or may hereafter be provided by law, and which shall not be diminished during the respective terms for which they may be elected or appointed.

SEC. 14. The inferior courts shall hold annually such terms as the general assembly may direct.

SEC. 15. All appeals from inferior courts shall be taken in such manner and to such courts as may be provided by law. Appeals may be taken from courts of justices of the peace to such courts and in such manner as may be prescribed by law.

SEC. 16. When a vacancy occurs in the office of judge of the supreme or any of the inferior courts it shall be filled by appointment of the governor, which appointee shall hold his office the residue of the unexpired term and until his successor is elected and qualified.

SEC. 17. The supreme court and such other courts as may be established by law shall be courts of record and shall each have a common seal.

SEC. 18. The supreme court shall appoint a clerk of such court and also a reporter of its decisions. The decisions of the supreme court shall be in writing and signed by the judges concurring therein. Any judge dissenting therefrom shall give the reasons of such dissent in writing over his signature; all such decisions shall be filed in the office of the clerk of the supreme court and be published in such manner as the general assembly may direct. The clerk and reporter shall hold their respective offices for the term of six years, subject to removal by the court for cause.

SEC. 19. A county clerk shall be elected by the qualified electors in each organized county in this state, for the term of four years, and shall perform such duties and receive such fees as are now or may hereafter be prescribed by law.

SEC. 20. In each township in this state there shall be elected by the qualified electors thereof two justices of the peace, who shall hold their offices for the term of four years. Provided, that in such townships as may contain more than two hundred qualified electors an additional justice of the peace may be chosen. Justices of the peace shall have exclusive original jurisdiction in all actions of contract and replevin where the amount in controversy does not exceed two hundred dollars, and concurrent jurisdiction with the circuit court where the amount in controversy does not exceed five hundred dollars. In criminal causes the jurisdiction of justices of the peace shall extend to all matters less than felony for final determination and judgment.

SEC. 21. Any suitor in any court in this state shall have the right to prosecute or defend his suit either in his own proper person or by attorney.

SEC. 22. In the courts of this state there shall be no exclusion of any witness in civil actions because he is a party to, or is interested in, the issue to be tried, and no person convicted of infamous crime shall be a competent witness in any cause without the consent of both parties to the controversy. Provided, that in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transactions with or statements to the testator, intestate or ward, unless called to testify thereto by the opposite party or required to testify thereto by the court. The judges of the supreme and all inferior courts shall be conservators of the peace throughout their respective jurisdictions.

ARTICLE VIII.

FRANCHISE.

SECTION 1. The following classes of persons shall not be permitted to register, vote or hold office in this state: First—Persons who may have been convicted before any court of this state, or of the United States or any other state, of any crime punishable by law with death or confinement in the penitentiary. Provided, that any person disfranchised under this section who may be pardoned or his sentence commuted, such pardon or commutation of sentence shall remove all disabilities imposed by this section. Second—Paupers, idiots and insane persons.

SEC. 2. Every male person who has attained the age of twenty-one years and who is a citizen of the United States, or who has legally declared his intention to become a citizen thereof, who shall have resided in this state six months, and in the county in which he offered his vote ten days next preceding the election, shall be deemed a qualified elector and entitled to vote, if registered, unless disqualified by some one of the clauses of section one of this article.

SEC. 3. In all elections by the people the electors shall vote by ballot. The secrecy of the ballot shall be preserved inviolate, and the general assembly shall provide suitable laws for that purpose. On the day of an election held by the people no elector shall be subject to arrest on any civil process. The general assembly shall pass adequate laws to prevent the sale of intoxicating liquors on the day on which any election by the people may be held.

NOTE.—The act of January 23, 1873, providing for the submission of the foregoing article as an amendment to the constitution for ratification by the people, provides that if such amendment should be ratified, it should be substituted for and known as ARTICLE VIII. Hence the amendment takes its place in the body of the constitution.

Submitted to the people for ratification on the third day of March, 1873, and declared ratified on the nineteenth day of April, 1873, by proclamation of the governor of that date.—[DIGESTER.]

ARTICLE IX.

EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence among all classes being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain a system of free schools for the gratuitous instruction of all persons in this state between the ages of five and twenty-one years, and the funds appropriated for the support of common schools shall be distributed to the several counties in proportion to the number of children and youths therein between the ages of five and twenty-one years, in such manner as shall be prescribed by law, but no religious or other sect or sects shall ever have any exclusive right to, or control of any part of, the school funds of this state.

SEC. 2. The supervision of public schools shall be vested in a superintendent of public instruction and such other officers as the general assembly shall provide. The superintendent of public instruction shall receive such salary and perform such duties as shall be prescribed by law.

SEC. 3. The general assembly shall establish and maintain a state university, with departments for instruction in teaching, in agriculture and the natural sciences, as soon as the public school fund will permit.

SEC. 4. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, and not otherwise appropriated by the United States or this state; also all mines [moneys?], stocks, bonds, lands and other property now belonging to any fund for purposes of education; also the net proceeds of all sales of lands and other property and effects that may accrue to this state by escheat, or from sales of estrays, or from unclaimed dividends or distributive shares of the estates of deceased persons, or from fines, penalties or forfeitures; also any proceeds of the sales of public lands which may have been or may be hereafter paid over to this state (congress consenting); also the grants, gifts or devises that have been or hereafter may be made to this state, and not otherwise appropriated by the terms of the grant, gift or devise, shall be securely invested and sacredly preserved as a public school fund, which shall be the common property of the state; the annual income of which fund, together with one dollar *per capita* to be annually assessed on every male inhabitant of this state over the age of twenty-one years, and so much of the ordinary annual revenue of the state as may be necessary, shall be faithfully appropriated for establishing and maintaining the free schools and the university in this article provided for, and for no other uses or purposes whatever.

SEC. 5. No part of the public school fund shall be invested in the stocks or bonds or other obligations of any state or any county, city, town or corporation. The stocks belonging to any school fund or university fund shall be sold in such manner and at such times as the general assembly shall prescribe, and the proceeds thereof and the proceeds of the sales of any lands or other property which now belongs or may hereafter belong to said school fund may be invested in the bonds of the United States.

SEC. 6. No township or school district shall receive any portion of the public school fund, unless a free school shall have been kept therein for not less than three months during the year, for which distribution thereof is made. The general assembly shall require by law that every child of sufficient mental and physical ability shall attend the public schools, during the period between the ages of five and eighteen years, for a term equivalent to three years, unless educated by other means.

SEC. 7. In case the public school fund shall be insufficient to sustain a free school at least three months in every year in each school district in this state, the general assembly shall provide by law for raising such deficiency by levying such tax upon all taxable property in each county, township or school district as may be deemed proper.

SEC. 8. The general assembly shall, as far as it can be done without infringing upon vested rights, reduce all lands, moneys or other property used or held for school purposes in the various counties of this state into the public school fund herein provided for.

SEC. 9. Provision shall also be made by general laws for raising such sum or sums of money by taxation or otherwise in each school district as may be necessary for the building and furnishing of a sufficient number of suitable school-houses for the accommodation of all the pupils within the limits of the several school districts.

ARTICLE X.

FINANCES, TAXATION, PUBLIC DEBT AND EXPENDITURES.

SECTION 1. The levying of taxes by the poll is grievous and oppressive; therefore, the general assembly shall never levy a poll-tax excepting for school purposes.

SEC. 2. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, joint stock companies or otherwise; and also all real and personal property, according to its true value in money; but burying-grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, shall never be taxed. Real estate shall be appraised at least once every five years, by an appraiser to be provided for by law, at its true value in money. Personal property shall be appraised in such manner as may be provided by law at its true value in money, but the general assembly may exempt from taxation personal property to the value of five hundred dollars to each tax-payer.

SEC. 3. The general assembly shall provide by law for taxing the notes and bills discounted or purchased, moneys loaned and all other property, effects or dues of every description, without deduction, of all banks now existing or hereafter created, and of all bankers, so that all property employed in banking shall always bear a burden of taxation equal to that imposed on other property of individuals.

SEC. 4. The general assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year; and also a sufficient sum to pay the interest on the state debt.

SEC. 5. No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same.

SEC. 6. The credit of the state or counties shall never be loaned for any purpose without the consent of the people thereof expressed through the ballot-box.

SEC. 7. The general assembly may require the exhibit of receipts and expenditures of state and county officers at such time and manner as may be prescribed by law.

SEC. 8. No money shall be paid out of the treasury until the same shall have been appropriated by law.

SEC. 9. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; and the money arising from the creation of such debts shall be appropriated to the purpose for which it was obtained or to pay the debts so contracted, and to no other.

SEC. 10. In addition to the above power, the state may contract debts to repel invasion, suppress insurrection, preserve the public peace, defend the state in time of war, or to redeem the present outstanding indebtedness of the state; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised and no other, and all debts incurred to redeem the present outstanding indebtedness of the state shall be so contracted as to be payable by the sinking fund hereinafter provided for, as the same shall accumulate.

SEC. 11. The faith of the state being pledged for the payment of its debt, in order to provide therefor there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and annually to reduce the same. The said sinking fund shall consist of such net earnings and profits of public institutions, bonds, stocks or other property of the state, or of any other funds or resources that are or may be provided by law.

SEC. 12. The governor, secretary of state and attorney-general are hereby created a board of commissioners, to be styled "the commissioners of the sinking fund."

SEC. 13. The commissioners of the sinking fund shall immediately preceding each regular session of the general assembly make an estimate of the probable amount of the fund provided by the eleventh section of this article from all sources, except from taxation, and report the same, together with all their proceedings relative to said fund and the public debt, and transmit the same to the general assembly; and the general assembly shall make all necessary provision for raising and disbursing said sinking fund in pursuance of the provisions of this article.

SEC. 14. It shall be the duty of said commissioners faithfully to apply in such manner as the general assembly may by law direct said fund, together with all moneys that may be by the general assembly appropriated to that object, to the payment of the interest as it becomes due and the redemption of the principal of the public debt of the state, excepting only school and trust funds held by the state.

SEC. 15. The principal arising from the sale of all lands donated to the state for school purposes shall be paid into the treasury, and the state shall pay interest thereon for the support of schools at the rate of six per cent. per annum.

SEC. 16. The state shall never assume the debts of county, town, city or other corporation unless such debts have been created to repel invasion, suppress insurrection or to provide for the public welfare and defense.

SEC. 17. The general assembly shall tax all privileges, pursuits and occupations that are of no real use to society; all others shall be exempt, and the amount thus raised shall be paid into the treasury.

ARTICLE XI.

MILITIA.

SECTION 1. All able-bodied electors in this state shall be liable to military duty in the militia of this state, but all citizens of any denomination whatever, who, from scruples of conscience, may be averse to bearing arms, shall be exempt therefrom upon such conditions as may be prescribed by law.

SEC. 2. The general assembly shall provide for organizing, equipping and disciplining the militia in such manner as it shall deem expedient, not incompatible with the laws of the United States.

SEC. 3. The governor shall be commander-in-chief, and shall have power to call out the militia to execute the laws, to suppress insurrection, to repel invasion and to preserve the public peace.

ARTICLE XII.

EXEMPTED PROPERTY.

SECTION 1. The personal property of any resident of this state to the value of two thousand dollars, to be selected by such resident, shall be exempted from sale on execution or other final process of any court issued for the collection of any debt contracted after the adoption of this constitution.

SEC. 2. Hereafter the homestead of any resident of this state who is a married man or head of a family shall not be encumbered in any manner while owned by him except for taxes, laborers' and mechanics' liens and securities for the purchase money thereof.

SEC. 3. Every homestead not exceeding one hundred and sixty acres of land, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any town, city or village, or in lieu thereof, at the option of the owner, any lot in any city, town or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of this state, and not exceeding the value of five thousand dollars, shall be exempted from sale on execution or any other final process from any court; but no property shall be exempt from sale for taxes, for the payment of obligations contracted for the purchase of said premises, for the erection of improvements thereon or for labor performed for the owner thereof. Provided, that the benefit of the homestead herein provided for shall not be extended to persons who may be indebted for dues to the state, county, township, school or other trust funds.

SEC. 4. If the owner of a homestead die, leaving a widow, but no children, the same shall be exempt, and the rents and profits thereof shall accrue to her benefit during the time of her widowhood, unless she be the owner of a homestead in her own right.

SEC. 5. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of his debts, in all cases, during the minority of his children, and also so long as his widow shall remain unmarried, unless she be the owner of a homestead in her own right.

SEC. 6. The real and personal property of any female in this state, acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain the separate estate and property of such female, and may be devised or bequeathed by her the same as if she were a *femme sole*. Laws shall be passed providing for the registration of the wife's separate property, and when so registered, and so long as it is not entrusted to the management or control of her husband otherwise than as an agent, it shall not be liable for any of his debts, engagements or obligations.

ARTICLE XIII.

AMENDMENTS TO THE CONSTITUTION.

SECTION 1. Any amendments to this constitution may be proposed in either house of the general assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published as provided by law, for three months previous to the time of making such choice; and if in the general assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as the general assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the general assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for, or against, each of said amendments separately.

ARTICLE XIV.

APPORTIONMENT.

SECTION 1. The congressional districts shall remain as they now are. Provided, that the general assembly may, at the first session held after the adoption of this constitution, redistrict the state for congressional purposes.

SEC. 2. Until after the apportionment as herein provided for, the senatorial and representative districts shall be composed of the following counties, to wit: The First, of Jackson, Craighead, Poinsett, Cross and Mississippi; Second, of Lawrence, Randolph and Greene; Third, of Madison, Marion, Carroll, Fulton and Izard; Fourth, of Independence and Van Buren; Fifth, of Searey, Pope and Conway; Sixth, of Newton, Johnson and Yell; Seventh, of Washington and Benton; Eighth, of Crawford, Franklin and Sebastian; Ninth, of Crittenden, St. Francis and Woodruff; Tenth, of Pulaski and White; Eleventh, of Phillips and Monroe; Twelfth, of Prairie and Arkansas; Thirteenth, of Scott, Polk, Montgomery and Hot Spring; Fourteenth, of Hempstead; Fifteenth, of Lafayette and Little River; Sixteenth, of Union and Calhoun; Seventeenth, of Clark, Pike and Sevier; Eighteenth, of Columbia; Nineteenth, of Ouachita; Twentieth, of Jefferson and Bradley; Twenty-first, of Dallas, Saline and Perry; Twenty-second, of Ashley, Chicot, Drew and Desha. The senators and representatives shall be apportioned among the several senatorial and representative districts as follows, to wit:

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ARTICLE XV.

MISCELLANEOUS PROVISIONS.

SECTION 1. The president of the convention shall, immediately after the adjournment thereof, cause this constitution to be deposited in the office of the secretary of state, and shall transmit a copy of the same to the president of the United States, to be by him laid before the congress of the United States.

SEC. 2. In all cases not otherwise provided for in this constitution, the general assembly may determine the mode of filling all vacancies in all offices, and of choosing all necessary officers, and shall define their respective powers and duties and provide suitable compensation for all officers.

SEC. 3. All general elections shall be held on the Tuesday succeeding the first Monday in November, and shall be biennial, commencing at the general election of A. D. 1868; but all officers elected under the provisions of this constitution and schedule, except members of congress, at the election commencing on the thirteenth day of March, 1868, shall hold and continue in office in accordance with the provisions of this constitution the same as though elected at the general election to be held on the Tuesday succeeding the first Monday in November, 1868; and no election shall be held for said officers at the general election of 1868.

SEC. 4. All chartered cities and villages under the laws of this state shall hold their municipal elections for the year 1868 at such times and places as may be provided in this constitution and the schedule to the same.

SEC. 5. The term of office of all township and precinct officers shall expire thirty days after this constitution goes into effect, and the governor shall thereafter appoint such officers, whose term of office shall continue until the general assembly shall provide by law for an election of said officers.

SEC. 6. Until the general assembly shall otherwise provide, a prosecuting attorney for each judicial circuit shall be appointed by the governor, by and with the advice and consent of the senate, who shall hold his office for the term of four years and until his successor is chosen and qualified. Provided, that the general assembly shall not interfere with the term of any appointed prosecuting attorney.

SEC. 7. The compensation of senators and representatives shall be six dollars per diem during the first session after the adoption of this constitution, but may afterward be prescribed by law. Provided, no increase of compensation shall be prescribed which shall take effect until the period for which the members of the house of representatives then existing shall have expired.

SEC. 8. Senators and representatives shall receive twenty cents per mile for each mile necessarily traveled in going to and returning from the seat of government in attending each session of the general assembly, until otherwise provided by law.

SEC. 9. All salaries, fees and per diem or other compensation of all state, county, town or other officers within the state shall be payable in such funds as may by law be receivable for state taxes.

SEC. 10. Any public fund set apart by the general assembly for one purpose shall not be used for another, unless in each case otherwise specially authorized by law.

SEC. 11. This convention shall appoint not more than three persons, learned in the law, whose duty it shall be to revise and rearrange the statute laws of this state, both civil and criminal, so as to have but one law on any one subject; and also three other persons, learned in the law, whose duty it shall be to prepare a code of practice for the courts, both civil and criminal, in this state, by abridging and simplifying the rules of practice and laws in relation thereto; all of whom shall, at as early a day as practicable, report the result of their labors to the general assembly for their adoption or modification. The general assembly shall provide suitable compensation for said persons appointed as aforesaid.

SEC. 12. No county now established by law shall ever be reduced by the establishment of any new county or counties to less than six hundred square miles; nor shall any county be hereafter established which shall contain less than six hundred square miles.

SEC. 13. No indenture of any person hereafter made and executed out of this state, or, if made in this state, where the term of service exceeds one year, shall be of the least validity, except those given in cases of apprenticeships, which shall not be for a longer term than until the apprentice shall arrive at the age of twenty-one years if a male, or eighteen years if a female.

SEC. 14. All contracts for the sale or purchase of slaves are null and void, and no court of this state shall take cognizance of any suit founded on such contracts; nor shall any amount ever be collected or recovered on any judgment or decree which shall have been, or which hereafter may be, rendered on account of any such contract or obligation on any pretext, legal or otherwise.

SEC. 15. There shall be a great seal of the state, which shall be kept and used officially by the secretary of state, and the seal heretofore in use in this state shall continue to be the great seal of the state until another shall have been adopted by the general assembly.

SEC. 16. Private seals are hereby abolished, and hereafter no distinction shall exist between sealed and unsealed instruments concerning contracts between individuals. All laws of this state not in conflict with this constitution shall remain in full force until otherwise provided by the general assembly, or until they expire by their own limitation. Nothing herein shall be construed to impair vested rights under provisions of existing laws.

SEC. 17. All officers of this state—executive, legislative and judicial—before they enter upon the duties of their respective offices shall take the following oath: "I, ———, do solemnly swear (or affirm) that I am not disfranchised by the constitution or laws of the United States, or the constitution of the State of Arkansas; that I will honestly and faithfully support and defend the constitution and laws of the United States, the union of states, and the constitution and laws of the State of Arkansas, and that I will honestly and faithfully discharge the duties of the office on which I am about to enter to the best of my ability. So help me, God."

SEC. 18. The term of all officers elected or appointed under the provisions of this constitution shall expire on the first day of January, 1873, unless herein otherwise provided.

SEC. 19. No one shall be precluded from being elected or appointed to any office by reason of having been a delegate to this convention or an officer of the same.

SEC. 20. No person shall be allowed or qualified to sit on any jury who is not a qualified elector.

SEC. 21. The general assembly may, by general law, declare the legal rate of interest upon contracts in which no rate of interest is specified, but no law limiting the rate of interest for which individuals may contract in this state shall ever be passed.

SEC. 22. All judges and clerks of election appointed under provisions of this constitution [shall take and subscribe to the oath of an elector as provided in section five, of article VIII, before they enter upon the duties of said offices];* and said judges are hereby authorized to administer the oath to each other and to the clerks; also to administer the same to all electors offering to vote. Said judges and clerks shall also swear to discharge their respective duties to the best of their ability according to law. Judges of election may appoint a suitable number of persons who shall, with themselves, be conservators of the peace, and they are hereby empowered to arrest all offenders. Any one refusing to act as such when called on by the judges shall be subject to a fine of at least one hundred dollars or imprisonment not less than six months, or both.

SCHEDULE.

SECTION 1. On the thirteenth day of March, A. D. 1868, and such successive days as hereinafter provided, an election shall be held for members of the house of representatives of the United States, governor, lieutenant-governor, secretary of state, auditor, treasurer, attorney-general, superintendent of public instruction, judges of the supreme court, members of the general assembly and all county officers, and also for the submission of this constitution to the people for their adoption or rejection.

SEC. 2. Upon the days designated as aforesaid every qualified elector under the provisions of this constitution may vote for all officers to be elected under this constitution at such election, and also for or against the adoption of this constitution.

SEC. 3. In voting for or against the adoption of this constitution, the words "For Constitution" or "Against Constitution" shall be written or printed on the ballot of each voter, but no voter shall vote for or against this constitution on a separate ballot from that cast by him for officers to be elected at said election under this constitution.

SEC. 4. A board of commissioners is hereby appointed, to consist of James L. Hodges, Joseph Brooks and the president of this convention, any two of whom shall constitute a quorum to transact business, who shall keep an office for the transaction of business in Little Rock, and who may employ such clerical force as may be necessary, said clerks not to receive more per day for each day actually employed than the *per diem* paid the assistant secretaries of this convention, and who are empowered and authorized to appoint, or cause to be appointed, suitable persons for judges and clerks of election in each county in this state, to hold the election therein for all state and county officers, and for members of the general assembly and of the house of representatives of the United States, and also for the ratification of this constitution. Said election shall be held at such times and places in each county, commencing on the thirteenth day of March and continuing on such successive days as the commissioners may direct, to secure a full and fair vote at such election.

SEC. 5. The judges of election, appointed as aforesaid, shall make returns of the same to said commissioners in such manner and under such regulations as said commissioners may prescribe, which returns shall show the number of votes cast at said election for and against this constitution, and the number cast for each candidate for the offices provided for in this constitution and schedule.

SEC. 6. Any person contesting the election under this constitution for any state office or member of the general assembly shall do so before said board of commissioners, who shall have power to decide and declare the right to any office contested, and give the candidate legally elected a certificate of the same. Provided, said commissioners may, in the cases of members of the general assembly whose right to the seats may be contested, refer the same to the general assembly for their determination. Said board of commissioners shall appoint the judges and clerks of the municipal elections to be held under the provisions of this constitution. Said judges shall conduct and make returns of said elections in the manner prescribed by the charter of the city or village in which said municipal election shall be held.

SEC. 7. Said commissioners shall appoint suitable persons as boards in every county to hear and decide all cases of contested county elections.

SEC. 8. The said commissioners shall have power to inquire into the fairness or validity of the voting upon the ratification of this constitution, and to count the votes given at said election, and shall reject all fraudulent or illegal votes cast at said election; and said commissioners shall also have power, whenever it is made to appear that fraud, fear, violence, improper influence or restraint were used, or persons were prevented or intimidated from voting at such elections, to take such steps, either by setting aside the election and ordering a new one, or rejecting votes, or correcting the result in any county or precinct as may in such cases be just and equitable.

SEC. 9. The said commissioners shall declare the result of the election upon the ratification of this constitution, and, if adopted, the president of this convention shall transmit a certified copy of the same, together with an abstract of the votes cast, to the president of the United States, to be by him laid before the

* The clause in brackets was rendered obsolete by the adoption of article VIII as amended 1873.

congress of the United States for their approval or rejection, and shall also declare the officers elected thereunder; and, if declared ratified, the constitution shall, from and after that date, be in full force and effect.

SEC. 10. No person disqualified from voting or registering under this constitution shall vote for candidates for any office, nor shall be permitted to vote for the ratification or rejection of this constitution at the polls herein authorized. The governor and all other officers elected under this constitution shall enter upon the duties of their offices when they shall have been declared duly elected by said board of commissioners, and shall have duly qualified. All officers shall qualify and enter upon the discharge of the duties of their offices within fifteen days after they have been duly notified of their election or appointment.

SEC. 11. Upon notice of the election or appointment and qualification of the officers elected or appointed under this constitution, the present incumbents of all state, county and city offices shall vacate the same and turn over to the officers so elected or appointed and qualified hereunder all books, papers, records, moneys and documents belonging or pertaining to said offices, on application made by the officers elected or appointed and qualified under this constitution.

SEC. 12. Any person may vote at the polls herein authorized for the election of officers and ratification of this constitution whom the judges of said election shall be satisfied by oath of the person offering to vote, and such other satisfactory evidence as they may require, is a legally qualified elector under this constitution. Provided, the judges of election shall administer to every person offering to vote at said election the oath prescribed in this constitution.

SEC. 13. In the event that either of the three commissioners appointed by section four hereof should be a candidate for any office, the other two commissioners shall canvass the vote so far as it relates to that office, and issue the certificate to the person elected.

SEC. 14. In case of death or any disability of any member or members of said board of commissioners, the remaining commissioner or commissioners shall have power to fill such vacancy; and said commissioner or commissioners so appointed shall have full power to act as though originally appointed.

SEC. 15. Any person selling or giving away intoxicating liquor during the time of the election herein provided for shall be punished by a fine not less than two hundred dollars for each and every offense, or imprisonment not less than six months, or both.

SEC. 16. Said commissioners shall provide suitable poll-books for each county and such instructions as may be necessary to carry into effect the provisions of this schedule. Judges and clerks of election thus appointed shall receive the same per diem as the boards of registrars provided for in the act entitled "An act to provide for the more efficient government of the rebel states," passed March 2, 1867, and acts supplementary thereto.

SEC. 17. The commissioners herein appointed shall receive for their services for each day actually employed such compensation per day and allowances, and in such manner, as are now provided for members of this convention. All expenses incurred under this schedule not otherwise provided for shall be paid out of the appropriation for defraying the expenses of this convention.

Done in convention, at Little Rock, the eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second. In witness whereof we have hereunto subscribed our names.

THOS. M. BOWEN,

President of the Convention and Delegate from the County of Crawford.

JOHN G. PRICE, *Secretary.*

GEORGE S. SCOTT,
Little River County.
FRED. R. POOLE,
Mississippi and Craighead Counties.
GEORGE W. DALE,
Independence County.
PETER C. MISNER,
Independence County.
CLIFFORD STANLY SIMS,
Delegate from Desha County.
DANIEL COATES,
Delegate from St. Francis County.
J. A. HOUGHTON,
Delegate from Cross and Poinsett Counties.
FRANKLIN MONROE ROUNSAVILLE,
Yell County.
SOLOMON EXON,
Delegate from Clark County.
MILES LEDFORD LANGLEY,
Clark County.
GAYLE H. KYLE,
Delegate from Dallas County.
MOSES BELL,
Delegate from Sebastian County.
JOHN H. HUTCHINSON, M. D.,
Delegate from Arkansas County.
JOHN MCCLURE,
Delegate, Arkansas County.

PARLEY A. WILLIAMS,
Delegate from Marion and Newton.
ROBERT HATFIELD,
Delegate from Franklin County.
JOHN W. HARRISON,
Delegate from Hot Spring County.
JAMES W. MASON,
Delegate from Chicot County.
GEORGE W. MCCOWN,
Delegate from Columbia County.
WILLIAM G. HOLLIS,
Delegate from Calhoun County.
JAMES L. HODGES,
Delegate from Pulaski County.
JAMES HINDS,
Delegate from Pulaski County.
HENRY RECTOR,
Delegate from Pulaski County.
THOMAS P. JOHNSON,
Delegate from Pulaski County.
JOHN C. PRIDDY,
Delegate from Montgomery County.
ASA HODGES,
Delegate from Crittenden County.
F. M. SAMS,
Delegate from Madison County.
CHARLES H. OLIVER,
Delegate from Scott County.

AMOS H. EVANS,
Delegate from Monroe County.
JOHN N. SARBER,
Delegate from Johnson County.
JESSEE MILLSAPS,
Delegate from Van Buren County.
WILLIAM A. WYATT,
Delegate from Searcy and Fulton Counties.
ANTHONY HINKLE,
Delegate from Conway County.
O. P. SNYDER,
Delegate from Jefferson County.
SAMUEL W. MALLORY,
Delegate from Jefferson County.
JAMES M. GRAY,
Delegate from Jefferson County.
JOSEPH BROOKS,
Phillips County.
THOMAS SMITH,
Phillips County.
WILLIAM H. GREY,
Phillips County.
JAMES T. WHITE,
Phillips County.

NATHAN N. RAWLINGS,
From Ouachita County.
JOHN R. MONTGOMERY,
Delegate from Hempstead County.
SOLOMON D. BELDIN,
Delegate from Hempstead County.
RICHARD SAMUELS,
Delegate from Hempstead County.
R. C. VAN HOOK,
Delegate from Union County.
IRA L. WILSON,
Delegate from Union County.
WALTER W. BRASHEAR,
Delegate from Pope County.
ALFRED M. MERRICK,
Delegate from Lafayette County.
WILLIAM A. BEASLEY,
Delegate from Columbia County.
JAMES P. PORTIS,
Delegate from Ouachita County.
MONROE HAWKINS,
Delegate from Lafayette County.
WM. MURPHY,
Delegate from Jefferson County.

TREATY

BETWEEN THE

UNITED STATES OF AMERICA

AND THE

FRENCH REPUBLIC.

The president of the United States of America and the first consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire, *an.* 9 (30th September, 1800), relative to the rights claimed by the United States in virtue of the treaty concluded at Madrid the 27th October, 1795, between his Catholic majesty and the said United States, and willing to strengthen the union and friendship which, at the time of the said convention, was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit: The president of the United States of America, by and with the advice and consent of the senate of the said states, Robert R. Livingston, minister plenipotentiary, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states near the government of the French Republic; and the first consul, in the name of the French people, the French citizen Barbe Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ARTICLE 1. *Whereas*, By article the third of the treaty concluded at St. Ildefonso the 9th Vendemiaire, *an.* 9 (1st October, 1800), between the first consul of the French Republic and his Catholic majesty, it was agreed as follows: "His Catholic majesty promises and engages, on his part, to retrocede to the French Republic six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states." *And whereas*, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory. The first consul of the French Republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the above-mentioned treaty concluded with his Catholic majesty.

ART. 2. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands and all public buildings, fortifications, barracks and other edifices which are not private property. The archives, papers and documents relative to the domain and sovereignty of Louisiana and its dependencies will be left in the possession of the commissaries of the United States, and copies will be afterward given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them.

ART. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess.

ART. 4. There shall be sent, by the government of France, a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his Catholic majesty the said country and its dependencies, in the name of the French Republic, if it thus has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States.

ART. 5. Immediately after the ratification of the present treaty by the president of the United States, and in case that of the first consul shall have been previously obtained, the commissary of the French Republic shall remit all the military posts of New Orleans and other parts of the ceded territory to the commissary or commissaries named by the president to take possession; the troops, whether of France or Spain, who may be there shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible in the course of three months after the ratification of this treaty.

ART. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements for the commerce of both nations may be agreed on, it has been agreed between the contracting parties that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or any of her said colonies, and the ships of Spain, coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted, during the space of twelve years, in the ports of New Orleans and in all other legal ports of entry within the ceded territory in the same manner as the ships of the United States coming directly from France or Spain or any of their colonies, without being subject to any other or greater duty on merchandise, or other greater tonnage, than those paid by the citizens of the United States. During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States. It is, however, well understood that the object of the above article is to favor the manufactures, commerce, freight and navigation of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

ART. 8. In future and forever after the expiration of twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

ART. 9. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic prior to the 30th September, 1800 (8th Vendemiaire, 9), is approved, and to have its execution in the same manner as if it had been inserted in the present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other. Another particular convention, signed at the same date as the present treaty, relative to a definitive rule between the contracting parties, is in like manner approved, and will be ratified in the same form and in the same time and jointly.

ART. 10. The present treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, and sooner if possible.

In faith whereof the respective plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto put their seals.

Done at Paris the tenth day of Floréal, in the eleventh year of the French Republic, and the 30th of April, 1803.

ROBERT R. LIVINGSTON,	[L. s.]
JAMES MONROE,	[L. s.]
BARBE MARBOIS,	[L. s.]

CONVENTION

BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC.

The president of the United States of America and the first consul of the French Republic, in the name of the French people, in consequence of the treaty of cession of Louisiana, which has been signed this day, wishing to regulate definitely everything which has relation to the said cession, have authorized to this effect the plenipotentiaries, that is to say: The president of the United States has, by and with the advice and consent of the senate of the said states, nominated for their plenipotentiaries Robert R. Livingston, minister plenipotentiary of the United States and James Monroe, minister plenipotentiary and envoy extraordinary of the said United States near the government of the French Republic, and the first consul of the French Republic, in the name of the French people, has named, as plenipotentiary of the said republic, the French citizen, Barbe Marbois, who, in virtue of their full powers, which have been exchanged this day, have agreed to the following articles:

ARTICLE 1. The government of the United States engages to pay to the French government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of debts due by France to citizens of the United States.

ART. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable half-yearly in London, Amsterdam or Paris, amounting, by the half-year, to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French government to be paid at either place; the principal of said stock to be reimbursed at the treasury of the United States in annual payments of not less than three millions of dollars each, of which the first payment shall commence fifteen years after the date of the exchange of ratifications. The stock shall be transferred to the government of France, or to such person or persons as shall be authorized to receive it, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the government of the United States.

It is further agreed that if the French government should be desirous of disposing of the said stock, to receive the capital in Europe at shorter terms, that its measures for that purpose shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock.

ART. 3. It is agreed that the dollar of the United States specified in the present convention shall be fixed at five francs 333-100000, or five livres eight sous turnois.

The present convention shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months, to date from this day or sooner if possible.

In faith of which the respective plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language; to which they have hereunto affixed their seals.

Done at Paris, the tenth of Floreal, eleventh year of the French Republic (30th April, 1803).

ROBERT R. LIVINGSTON, [L. s.]
JAMES MONROE, [L. s.]
BARBE MARBOIS, [L. s.]

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ACT OF ADMISSION.

AN ACT for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes.

WHEREAS, The people of the Territory of Arkansas did, on the thirtieth day of January, in the present year, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican; and,

WHEREAS, The number of inhabitants within the said territory exceeds forty-seven thousand seven hundred persons, computed according to the rule prescribed by the constitution of the United States; and the said convention have, in their behalf, asked the congress of the United States to admit the said territory into the Union as a state on an equal footing with the original states:

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the State of Arkansas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever; and the said state shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the main channel of the Mississippi River, on the parallel of thirty-six degrees north latitude; running from thence west, with the said parallel of latitude, to the St. Francis River; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the south-west corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red River by the lines described in the first article of the treaty between the United States and the Cherokee Nation of Indians west of the Mississippi, made and concluded at the City of Washington on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and twenty-eight; and to be bounded on the south side of Red River by the Mexican boundary line to the north-west corner of the State of Louisiana; thence east, with the Louisiana state line, to the middle of the main channel of the Mississippi River; thence up the middle of the main channel of the said river to the thirty-sixth degree of north latitude, the point of beginning.

SEC. 2. *And be it further enacted,* That until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

SEC. 3. *And be it further enacted,* That all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said State of Arkansas as elsewhere within the United States.

* * * * *
SEC. 8. *And be it further enacted,* That the State of Arkansas is admitted into the Union upon the express condition that the people of the said state shall never interfere with the primary disposal of the public lands within the said state, nor shall they levy a tax on any of the lands of the United States within the said state; and nothing in this act shall be construed as an assent by congress to all or any of the propositions contained in the ordinances of the said convention of the people of Arkansas, nor to deprive the State of Arkansas of the same grants, subject to the same restrictions, which were made to the State of Missouri by virtue of an act entitled "An act to authorize the people of the Missouri Territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and to prohibit slavery in certain territories," approved the sixth day of March, one thousand eight hundred and twenty.

Approved June 16, 1836.

NOTE.—Sections 4, 5, 6 and 7 of this act relate to the organization of the district court of the United States in this state, and, having been superseded by subsequent legislation, are omitted.

COMPACT.

AN ACT supplementary to the act entitled "An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes."

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That in lieu of the propositions submitted to the congress of the United States, by an ordinance passed by the convention of delegates at Little Rock, assembled for the purpose of making a constitution for the State of Arkansas, which are hereby rejected; and that the following propositions be, and the same are, hereby offered to the general assembly of the State of Arkansas, for their free acceptance or rejection; which, if accepted, under the authority granted to the general assembly for this purpose by the convention which framed the constitution of the said state, shall be obligatory upon the United States:

First. That the section numbered sixteen in every township, and when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state, for the use of the inhabitants of such township for the use of schools (a).

Second. That all salt springs, not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said state, for the use of the said state, the same to be selected by the general assembly thereof on or before the first day of January, one thousand eight hundred and forty; and the same, when so selected, to be used under such terms, conditions and regulations as the general assembly of the said state shall direct. Provided, that no salt spring the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said state. And provided, also, that the general assembly shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of congress; and that nothing contained in the act of congress entitled "An act authorizing the governor of the Territory of Arkansas to lease the salt springs in said territory, and for other purposes," or in any other act shall be construed to give to the said state any further or other claim whatsoever to any salt springs, or lands adjoining thereto, than those hereby granted (b).

Third. That five per cent. of the net proceeds of the sale of lands lying within the said state, and which shall be sold by congress from and after the first day of July next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals within the said state, under the direction of the general assembly thereof.

Fourth. That a quantity of land, not exceeding five sections, be, and the same is, hereby granted to the said state, in addition to the ten sections which have already been granted, for the purpose of completing the public buildings of the said state at Little Rock; which said five sections shall, under the direction of the general assembly of said state, be located, at any time, in legal divisions of not less than one quarter section, in such townships and ranges as the general assembly aforesaid may select, on any of the unappropriated lands of the United States within the said state.

Fifth. That the two entire townships of land which have already been located by virtue of the act entitled "An act concerning a seminary of learning in the Territory of Arkansas," approved the second of March, one thousand eight hundred and twenty-seven, are hereby vested in and confirmed to the general assembly of the said state, to be appropriated solely to the use of such seminary by the general assembly (c). Provided, that the five foregoing propositions, herein offered, are on the condition that the general assembly or legislature of the said state, by virtue of the powers conferred upon it by the convention which framed the constitution of the said state, shall provide, by an ordinance irrevocable without the consent of the United States, that the said general assembly of the said state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the state, whether for state, county, township or any other purpose, for the term of three years from and after the date of the patents respectively.

Approved June 23, 1836.

(a) See *Compact Amended*, first act, permitting sale of the sixteenth section. By an act of congress of the 20th May, 1826, it is made the duty of the secretary of the treasury, in cases where no land in any township or fractional township had been theretofore appropriated for the use of schools (in the states in which the sixteenth section is reserved for the use of schools) to select lands within the land districts for the use of schools in such township or fractional township.

(b) See *Compact Amended*, last act, authorizing sale of salt spring lands.

(c) See *Compact Amended*, second act.

ORDINANCE

AND

ACCEPTANCE OF COMPACT.

Be it ordained by the general assembly of the State of Arkansas, By virtue of the authority vested in said general assembly by the provisions of the ordinance adopted by the convention of delegates assembled at Little Rock, for the purpose of forming a constitution and system of government for said state, that the propositions set forth in "An act supplementary to the act entitled 'an act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,' " be, and the same are, hereby freely accepted, ratified and irrevocably confirmed as articles of compact and union between the State of Arkansas and the United States.

And be it further ordained by the authority aforesaid, That the general assembly of the State of Arkansas shall never interfere, without the consent of the United States, with the primary disposal of the soil within said state owned by the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than resident; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the state, whether for state, county, township or any other purpose, for the term of three years from and after the date of the patents respectively.

Approved October 18, 1836.

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COMPACT AMENDED.

ADDITIONAL ACTS.

SCHOOL LANDS.

AN ACT to authorize the legislatures of the States of Illinois, Arkansas, Louisiana and Tennessee to sell the lands heretofore appropriated for the use of schools in those states.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the legislatures of Illinois, Arkansas, Louisiana and Tennessee be and they are hereby authorized to provide by law for the sale and conveyance in fee simple of all or any part of the lands heretofore reserved and appropriated by congress for the use of schools within said states, and to invest the money arising from the sales thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said legislatures, to the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatever. Provided, said land, or any part thereof, shall in no wise be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the legislatures of said states shall by law direct; and in the apportionment of the proceeds of said fund each township and district shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district.

SEC. 2. And be it further enacted, That the legislatures of said states be and they are hereby authorized to make such laws and needful regulations as may be deemed expedient to secure and protect from injury or waste the sections reserved by the laws of congress for the use of schools to each township, and to provide by law, if not deemed expedient to sell, for leasing the same for any term not exceeding four years, in such manner as to render them productive and most conducive to the object for which they were designed.

SEC. 3. And be it further enacted, That if the proceeds accruing to any township or district from said fund shall be insufficient for the support of schools therein, it shall be lawful for said legislatures to invest the same in the most secure and productive manner, until the whole proceeds of the fund belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same. Provided, that the legislatures aforesaid shall in no case invest the proceeds of the sale of the lands in any township in manner aforesaid without the consent of the inhabitants in said township or district, to be obtained as aforesaid.

SEC. 4. And be it further enacted, That any sales of such lands, reserved as aforesaid, as have been made in pursuance of any of the laws enacted by the legislatures of said states, and not inconsistent with the principles of this act, are hereby ratified and confirmed so far as the assent of the United States to the same may be necessary to the confirmation thereof.

Approved February 15, 1843.

SEMINARY LANDS.

AN ACT giving the assent of congress to a change of the compact entered into between the United States and the State of Arkansas on her admission into the Union.

WHEREAS, The congress of the United States, by an act supplementary to an act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes, approved June 23, 1836, in the fifth proposition made to the State of Arkansas, and which was subsequently accepted by the general assembly of the State of Arkansas, provides

that the two entire townships of land located by virtue of an act of congress entitled "An act concerning a seminary of learning in the Territory of Arkansas," approved the second day of March, 1827, which, by the first recited act of congress, were vested in and confirmed to the general assembly of the State of Arkansas, to be appropriated solely to the use and support of a university in said state; and,

WHEREAS, The general assembly of the State of Arkansas have by their resolution, approved December 18, 1844, asked for a modification of said compact to authorize said general assembly to appropriate said seventy-two sections of land to common school purposes; therefore,

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the assent of congress be and is hereby given to the change in said compact asked for by the general assembly so as to authorize and empower the general assembly of the State of Arkansas, and they are hereby authorized and empowered, to appropriate said seventy-two sections of land for the use and benefit of common schools in said state, or in any other mode the said general assembly may deem proper for the promotion of education in said state.

Approved July 29, 1846.

SALT SPRING LANDS.

By the third section of an act of congress entitled "An act to give the consent of congress to the sale of certain salt spring lands heretofore granted to the States of Michigan, Illinois and Arkansas, it is enacted as follows, viz.:

That the State of Arkansas shall be and hereby is authorized to sell, in such manner as the legislature of said state shall by law direct, the whole or any part of the saline lands granted to said state by virtue of an act supplementary to the act entitled "An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes," approved June 23, 1836.

Approved March 3, 1847.

ADMISSION OF THE STATE

TO

REPRESENTATION IN CONGRESS.

WHEREAS, The people of Arkansas, in pursuance of the provisions of an act entitled "An act for the more efficient government of the rebel states," passed March 2, 1867, and the acts supplementary thereto, have framed and adopted a constitution of state government which is republican, and the legislature of said state has duly ratified the amendment to the constitution of the United States proposed by the thirty-ninth congress, and known as article fourteen; therefore,

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the State of Arkansas is entitled and admitted to representation in congress as one of the states of the Union, upon the following fundamental condition: That the constitution of Arkansas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said state. Provided, that any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters.

IN THE HOUSE OF REPRESENTATIVES, }
June 20, 1868. }

The president of the United States having returned to the house of representatives, in which it originated, the bill entitled "An act to admit the State of Arkansas to representation in congress," with his objections thereto, the house of representatives proceeded, in pursuance of the constitution, to reconsider the same, and

Resolved, that the said bill do pass, two-thirds of the house of representatives agreeing to pass the same.

Attest:

EDWARD MCPHERSON,
Clerk H. R. U. S.

IN THE SENATE OF THE UNITED STATES, }
June 22, 1868. }

The senate having proceeded, in pursuance of the constitution, to reconsider the bill entitled "An act to admit the State of Arkansas to representation in congress, returned to the house of representatives by the president of the United States, with his objections, and sent by the house of representatives to the senate, with the message of the president returning the bill.

Resolved, That the bill do pass, two-thirds of the senate agreeing to pass the same.

Attest:

GEO. C. GORHAM,
Secretary of the Senate.
(155)

AUTHENTICATION.

LAWS OF THE UNITED STATES CONCERNING AUTHENTICATION.

SECTION 1. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seal of such state, territory or country affixed thereto (a). The records and judicial proceedings of the courts of any state or territory or of any such country shall be proved or admitted in any other court within the United States by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken. *Rev. Stat. U. S., sec. 905, second ed.* (b).

(a) An exemplification of an act of the legislature of a state, under the great seal of the state, is evidence, though not attested by the governor or any other principal officer of the state. *U. S. v. Johns*, 4 *Dallas*, 412. See also 5 *Sergt. & Rawle*, 533; 1 *Pet.*, 352; 11 *Wheat.*, 392.

(b) The judicial proceedings here referred to are generally understood to be the proceedings of courts of general jurisdiction, and not those which are merely of municipal authority. 1 *Greenl. Ev.*, § 505. And accordingly it has been held that the judgments of justices of the peace were not within the meaning of these constitutional and statutory provisions. *Snyder v. Wise*, 10 *Barr*, 157; *Warren v. Flagg*, 2 *Pick*, 448; *Robinson v. Prescott*, 4 *N. Hamp.*, 450; *Mahurin v. Bickford*, 6 *Ib.*, 567; *Silver Lake Bank v. Harding*, 5 *Ohio*, 545; *Thomas v. Robinson*, 3 *Wend.*, 267. In Connecticut and Vermont, however, it is held that if the justice is bound by law to keep a record of his proceedings, they are within the meaning of the act of congress. *Bissell v. Edwards*, 5 *Day*, 363; *Starkweather v. Loomis*, 2 *Vern.*, 573; *Blodgett v. Jordan*, 6 *Ib.*, 580; and see *Scott v. Cleveland*, 3 *Monr.*, 62. But the proceedings of courts of chancery and of probate, as well as of the courts of common law, may be thus proved. *Scott v. Blanchard*, 8 *Martin (N. S.)*, 303; *Balfour v. Chew*, 5 *Ib.*, 517; *Johnson v. Rannels*, 6 *Ib.*, 621; *Ripple v. Ripple*, 1 *Rawle*, 381; *Craig v. Brown*, *Pet. C. C.*, 352; *Hunt v. Lyle*, 8 *Yerg.*, 142; *Barbour v. Watts*, 2 *A. K. Marsh*, 290, 293.

This does not apply to the records of the courts of the United States. *Mason's Administrator v. Laurason*, 1 *Cr. C. C.*, 190. But, though in terms it applies only to the state courts, the rule is equally applicable to those of the United States. *Tooker v. Thompson*, 3 *McLean*, 94. And a judgment of a court of the United States is admissible when authenticated in the manner provided in this act. *Buford v. Hickman*, *Hemp.*, 232. See *infra* 11.

It seems to be generally agreed that this method of authentication is not exclusive of any other which the states may think proper to adopt. *Kean v. Rice*, 12 *S. & R.* 203, 208; *The State v. Stude*, 1 *D. Chipm.*, 303; *Raynham v. Canton*, 3 *Pick.*, 293; *Biddis v. James*, 6 *Binn.*, 321; *Ex parte Povall*, 3 *Leigh*, 816; *Pepon v. Jenkins*, 2 *Johns. Cas.*, 119; *Ellmore v. Mills*, 1 *Hayw.*, 359; *Baker v. Field*, 2 *Yeates*, 532.

The clerk who certifies the record must be the clerk of the same court or of its successor, the certificate of his under-clerk, in his absence, or of the clerk of any other tribunal, office or body being held incompetent for this purpose. *Sampson v. Overton*, 4 *Bibb.*, 409; *Lothrop v. Blake*, 3 *Barr.*, 496; *Donohoo v. Brannon*, 1 *Overt.*, 328; *Schnertzell v. Young*, 3 *H. & McHen.*, 502. A surrogate acts as a clerk in certifying his proceedings, and, as he also acts in the capacity of judge, he must certify to the authentication. *Callin v. Underhill*, 4 *McLean*, 199.

Whenever the court whose record is certified has no seal, this fact should appear either in the certificate of the clerk or in that of the judge. *Craig v. Brown*, *Pet. C. C.*, 353. The seal of the court must be annexed to the record itself; it is not enough that it is annexed to the judge's certificate. *Turner v. Wallington*, *W. C. C.* 126.

The certificate must be given by the judge, if there be but one; or, if there be more than one, then by the chief justice or presiding judge or magistrate of the court from whence the record comes; and he must possess that character at the time he gives the certificate. A certificate that he is the judge that presided at the time of trial, or that he is the senior judge of the courts of law in the state, is deemed insufficient. *Lothrop v. Blake*, 3 *Barr*, 495; *Stephenson v. Bannister*, 3 *Bibb.*, 369; *Kirtland v. Smith*, 2 *Martin (N. S.)*, 497. And so is the certificate of a judge styling himself "one of the judges" of the court. *Stewart v. Gray*, *Hemp.*, 94. See *Callin v. Underhill*, 4 *McLean*, 199; *Erli v. Scott*, 2 *Harris*, 22.

SEC. 2. All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court (c), shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish or district in which such office may be kept, or of the governor or secretary of state, the chancellor or keeper of the great seal of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify under his hand and the seal of his office that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor or keeper of the great seal, it shall be under the great seal of the state, territory or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory or country as aforesaid, from which they are taken. *Ib.*, sec. 906.

SEC. 3. Whenever any person claiming to be interested in or entitled to land, under any grant or patent from the United States, applies to the department of the interior for copies of papers filed and remaining therein in any wise affecting the title to such land, it shall be the duty of the secretary of the interior to cause such copies to be made out and authenticated under his hand and the seal of the general land office for the person so applying. *Ib.*, sec. 460.

SEC. 4. Copies of any books, records, papers or documents in any of the executive departments, authenticated under the seals of such departments, respectively, shall be admitted in evidence equally with the originals thereof. *Ib.*, sec. 882.

A record of another state is not admissible if the certificate of the presiding magistrate omit to state that the attestation of the clerk is in due form. *Trigg v. Conway*, 11 *Hemp.*, 538. The phrase "due form" means the form of attestation used in the state from whence the record comes. *Craig v. Brown*, *Pet. C. C.*, 354. And the certificate of the presiding judge, being the evidence prescribed by law that this form has been observed, is at once indispensable and conclusive. *Ferguson v. Harwood*, 7 *C. R.*, 408; *Tooker v. Thompson*, 3 *McLean*, 93; *Taylor v. Carpenter*, 2 *W. & M.*, 4. A certificate that the person whose name is signed to the attestation is clerk of the court, and that the signature is his own handwriting, is not in conformity with the provisions of the act. *Craig v. Brown*, *Pet. C. C.*, 352. Where, however, the record of a judgment of a state court is offered in evidence in the circuit court sitting within the same state, the certificate of the clerk and seal of the court are sufficient authentication. *Mcwister v. Spalding*, 3 *McLean*, 24.

The words "true and correct transcript" are equivalent to a "full and complete transcript" in the certificate of a record by the clerk of a court. Where a judge who certifies that the attestation of the clerk is in due form describes himself as judge of the court, it is sufficient under the act of congress, without saying that he is "the judge," "sole judge," etc. *Buller v. Owen*, *use, etc.*, 7 *Ark. Rep.*, 369; *Central Bank of Geo. v. Veasey*, 14 *Ark. Rep.*, 671.

In the absence of evidence to the contrary, the court will presume in favor of the regularity of the official proceedings of a sister state—as where the seal of a court is affixed on paper without wax or any tenacious substance—that the sealing was according to the laws of the state. *State v. Lawson*, 14 *Ark. Rep.*, 114.

A judgment of a state court has the same credit, validity and effect in every other court within the United States which it had in the state where it was rendered; and whatever pleas would be good in a suit thereon in such state, and none others, can be pleaded in any other court within the United States. *Hampton v. McConnell*, 3 *Wh.*, 231; *Mills v. Duryee*, 7 *Cr.*, 481; *Westervelt v. Lewis*, 2 *McLean*, 511; *Taylor v. Carpenter*, 2 *W. & M.*, 4; *Warren Manufacturing Co. v. Etna Insurance Co.*, 2 *Paine*, 502; *Whitaker v. Bramson*, *Ib.*, 209; *Green v. Sarmiento*, *Pet. C. C.*, 74; *s. c.* 3 *W. C. C.*, 17; *Bryant v. Hunters*, *Ib.*, 48; *Field v. Gibbs*, *Pet. C. C.*, 157; *Armstrong v. Carson's Executors*, 2 *Dall.*, 302; 2 *Am. Leading Cases*, 774. But although this act makes a judgment regularly recovered in another state and duly authenticated conclusive evidence of an established demand, as of the date of such judgment, it does not prevent the several states from enacting statutes of limitation barring actions on such judgments in their courts. *Bank of the State of Alabama v. Dalton*, 9 *How.*, 522; *McElmoyle v. Cohen*, 13 *Pet.*, 312. Nor does it apply to a judgment recovered against a non-resident joint debtor without notice to him; such a judgment is not entitled to any faith or credit out of the state in which it was rendered. *D'Arcy v. Ketchum*, 11 *How.*, 165; see also *Barkman v. Hopkins et al.*, 11 *Ark. Rep.*, 157; *Buford and Pugh v. Kirkpatrick*, 13 *Ark. Rep.*, 33.

The record of a debt against an administrator in one state is not sufficient evidence of the debt against an administrator of the same estate in another state. *McLean v. Meek*, 18 *How.*, 16.

This section does not relate to the admissibility of acts, etc., of a state in its own courts or in the courts of the United States sitting in that state. *Town of South Ottawa v. Perkins*, 94 *U. S.*, 260.

The record of a district court of the United States is not within the provisions of this section, but is, when duly certified by the clerk under its seal, admissible as evidence in every other court of the United States. *Turnbull v. Payson*, 95 *U. S.*, 418.

(c) These are obviously among the public writings recognized by the common law as invested with an official character, and therefore susceptible of proof by secondary means, but which are not of the nature of judicial records or judgments. Of this kind are acts and orders of the executive of the state; the acts of the legislative bodies; the journals of either branch of the legislature; registers kept in public offices; books which contain the official proceedings of corporations, if the public at large are concerned with them; parish registers and the like. *Snyder v. Wise*, 10 *Barr*, 158. See *Drummond's Administrator v. Magruder*, 9 *Cr.*, 122; 1 *Burr's Trial*, 98.

SEC. 5. The commissioner of the general land office shall cause to be prepared, and shall certify, under the seal of the office, such copies of records, books and papers on file in his office as may be applied for to be used in evidence in courts of justice. *Ib.*, sec. 2469.

SEC. 6. Literal exemplifications of any records which have been or may be granted in virtue of the preceding section shall be deemed of the same validity in all proceedings, whether at law or in equity, wherein such exemplifications are adduced in evidence, as if the names of the officers signing and countersigning the same had been fully inserted in such record. *Ib.*, sec. 2470.

SEC. 7. Copies of any records, books or papers in the general land office, authenticated by the seal and certified by the commissioner thereof, or, when his office is vacant, by the principal clerk, shall be evidence equally with the originals thereof. And literal exemplifications of any such records shall be held, when so introduced in evidence, to be of the same validity as if the names of the officers signing and countersigning the same had been fully inserted in such record. *Ib.*, sec. 891.

GRANTS OF LAND.

SEMINARY LANDS (a).

AN ACT concerning a seminary of learning in the Territory of Arkansas.

Be it enacted by the senate and house of representatives of the United States of America, in Congress assembled, That the secretary of the treasury be and he is hereby authorized to set apart and reserve from sale out of any of the public lands within the Territory of Arkansas to which the Indian title has been or may be extinguished, and not otherwise appropriated, a quantity of land not exceeding two entire townships, for the use and support of an university within the said territory, and for no other use or purpose whatsoever (b), to be located in tracts of land of not less than an entire section, corresponding with any of the legal divisions into which the public lands are authorized to be surveyed, one of which said townships so set apart and reserved from sale shall be in lieu of an entire township of land directed to be located on the waters of the Arkansas River, in said territory, for the use of a seminary of learning therein, by an act of congress entitled, "An act making provision for the establishment of additional land offices in the Territory of Missouri," approved February the seventeenth, one thousand eight hundred and eighteen.

Approved March 2, 1827.

GRANT OF TEN SECTIONS OF LAND FOR PUBLIC BUILDINGS AT LITTLE ROCK (c).

AN ACT granting a quantity of land to the Territory of Arkansas for the erection of a public building at the seat of government of said territory.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the legislature of the Territory of Arkansas be and they are hereby authorized to select (d), or cause to be selected, a quantity of the unappropriated public lands in the Territory of Arkansas, not exceeding ten sections, and in portions not less than one quarter section, which is hereby granted to said territory for the purpose of raising a fund for the erection of a public building at Little Rock, the seat of government of said territory.

SEC. 2. That the legislature of said territory be and they are hereby authorized to adopt such measures for the sale of said tract of land, or any part thereof, at such times and manner and convey the same by such deeds as they shall deem expedient, and upon the presentation of such deeds of conveyance as shall be adopted by said legislature and given to the purchasers to the commissioner of the general land office, it shall be the duty of the president to issue patents to the purchasers as in other cases.

Approved March 2, 1831.

(a) By an act of congress of March 2, 1833, the governor of the territory was authorized to select and sell twenty sections of the seminary lands and to lease the remainder.

(b) See *Compact and Compact Amended*.

(c) An additional grant of five sections was made to the state on the 23d of June, 1836, for the completion of the public buildings. See *Compact*.

(d) See next act authorizing the governor of the territory to select.

AN ACT to authorize the governor of the Territory of Arkansas to select ten sections of land granted to said territory for the purpose of building a legislative house for said territory and for other purposes.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That all the authority and power is hereby vested in and given to the governor of the Territory of Arkansas which was vested in and given to the legislature of the Territory of Arkansas by an act of congress of the second of March, one thousand eight hundred and thirty-one, by which a quantity of land, not exceeding ten sections, was granted to said territory for the purpose of raising a fund for the erection of a public building at Little Rock, the seat of government of said territory (e).

SEC. 2. That nothing herein contained shall be so construed as authorizing any expense on the part of the United States for selecting said lands or building said house other than the aforesaid grant of ten sections of the unappropriated lands.

Approved July 4, 1832.

GRANT OF ONE THOUSAND ACRES FOR BUILDING A JAIL AND COURT-HOUSE AT LITTLE ROCK.

AN ACT granting to the Territory of Arkansas one thousand acres of land for the erection of a court-house and jail at Little Rock.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That there be granted to the Territory of Arkansas a quantity of land not exceeding one thousand acres, contiguous to and adjoining the town of Little Rock, for the erection of a court-house and jail in said town, which lands shall be selected by the governor (f) of the territory by legal subdivisions, and disposed of in such manner as the legislature may by law direct, and the proceeds of the lands so disposed of shall be applied toward building a court-house and jail in said town of Little Rock, and the surplus, if any, may be applied to such other objects as the legislature of said territory may deem proper.

Approved June 15, 1832.

INTERNAL IMPROVEMENT LANDS.

Sections eight and nine of "An act (of congress) to appropriate the proceeds of the sales of public lands and to grant pre-emption rights.

SECTION 8. There shall be granted to each state specified in the first section of this act (the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas and Michigan), five hundred thousand acres of land for purposes of internal improvement. Provided, that to each of the said states which have already received grants for said purposes there is hereby granted no more than a quantity of land which shall, together with the amount such state has already received as aforesaid, make five hundred thousand acres, the selections in all of the said states to be made within their limits respectively, in such manner as the legislature thereof shall direct (g); and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land, except such as is or may be reserved from sale by any law of congress or proclamation of the president of the United States, which said locations may be made at any time after the lands of the United States in said states respectively shall have been surveyed according to existing laws; and there shall be and hereby is granted to each new state that shall be hereafter admitted into the Union upon such admission so much land as, including such quantity as may have been granted to such state before its admission and while under a territorial government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

(e) By an act of congress of January 16, 1838, the locations and sales made by Governor Pope, with certain exceptions, were confirmed.

(f) The selections having been made by an act of congress of the second of March, 1833, it was directed that a patent for the lands be issued to the governor of the territory and his successors in office, and that the governor be authorized to lay off and sell the same in lots.

(g) See next act authorizing the governor to select.

SEC. 9. The lands herein granted to the states above named shall not be disposed of at a price less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the net proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement within the states aforesaid, respectively, namely: Roads, railways, bridges, canals and improvement of water-courses and draining of swamps; and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail and munitions of war, and for the passage of their troops without the payment of any toll whatever.

Approved 4th September, 1841.

AN ACT to authorize the governors of the States of Illinois, Arkansas and Missouri to cause to be selected the lands therein mentioned.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That so much of the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emptions," approved September fourth, eighteen hundred and forty-one, as provides that the selections of the grants of land made to the several states therein mentioned, for the purposes of internal improvement, shall be made, respectively, in such manner as the legislatures thereof shall direct, is so far modified as to authorize the governors of the States of Illinois, Arkansas and Missouri to cause the selections to be made for those states without the necessity of convening the legislatures thereof for that purpose.

Approved March 19, 1842.

SWAMP LANDS.

AN ACT to enable the State of Arkansas and other states to reclaim the "swamp lands" within their limits.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act shall be and the same are hereby granted to said state.

SEC. 2. *And be it further enacted, That it shall be the duty of the secretary of the interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas; and at the request of said governor cause a patent to be issued to the state therefor, and on that patent the fee simple to said lands shall vest in said State of Arkansas, subject to the disposal of the legislature thereof. Provided, however, that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.*

SEC. 3. *And be it further enacted, That, in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.*

SEC. 4. *And be it further enacted, That the provisions of this act be extended to and their benefits be conferred upon each of the other states of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.*

Approved September 28, 1850.

RAILROAD LANDS.

AN ACT granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point on the Mississippi opposite the mouth of the Ohio River, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the right of way through the public lands be and the same is hereby granted to the States of Arkansas and Missouri, for the construction of a railroad from a point on the Mississippi River, opposite the mouth of

the Ohio, in the State of Missouri, *via* Little Rock, to the Texas boundary line, near Fulton, in Arkansas, with branches from Little Rock, in Arkansas, to the Mississippi River and to Fort Smith, in said state, with the right to take the necessary materials of earth, stone, timber, etc., for the construction thereof. Provided, that the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road, made under the direction of the legislatures of the said states, shall be forwarded to the proper local land offices, respectively, and to the general land office at Washington City, within ninety days after the completion of the same.

SEC. 2. *And be it further enacted*, That there be and is hereby granted to the States of Arkansas and Missouri, respectively, for the purpose of aiding in making the railroad and branches as aforesaid, within their respective limits, every alternate section of land, designated by even numbers, for six sections in width on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said state, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid, which lands, being equal in quantity to one-half of six sections in width on each side of said road, the States of Arkansas and Missouri shall have and hold to and for the use and purpose aforesaid. Provided, that the lands to be located shall in no case be further than fifteen miles from the line of the road. And provided, further, that the lands hereby granted shall be applied in the construction of said road, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever. And provided, further, that any and all lands reserved to the United States by any act of congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of the said railroad and branches through such reserved lands.

SEC. 3. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said road shall not be sold for less than double the minimum price of the public lands when sold.

SEC. 4. *And be it further enacted*, That the said lands hereby granted to the said states shall be subject to the disposal of the legislatures thereof, for the purpose aforesaid, and no other; and the said railroad and branches shall be and remain a public highway for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 5. *And be it further enacted*, That the lands hereby granted to said states shall be disposed of by said states only in the manner following: that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said road, may be sold; and when the governors of said state or states shall certify to the secretary of the interior that twenty continuous miles of said road is completed, then another like quantity of land hereby granted may be sold: and so from time to time until said road is completed; and if said road is not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 6. *And be it further enacted*, That the United States mail shall at all times be transported on the said road and branches, under the direction of the postoffice department, at such prices as congress may by law direct.

Approved February 9, 1853.

AN ACT to revive and extend the provisions of "An act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point upon the Mississippi, opposite the mouth of the Ohio River, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River," approved February 9, 1853, and for other purposes.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the "Act granting the right of way and making a grant of land to the States of Arkansas and Missouri to aid in the construction of a railroad from a point upon the Mississippi opposite the mouth of the Ohio River, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River," approved February nine, eighteen hundred and fifty-three, with all the provisions therein made, be, and the same is, hereby revived and extended for the term of ten years from the passage of this act; and all the lands therein granted which reverted to the United States under the provisions of said act be, and the same are, hereby restored to the same custody, control and condition, and made subject to the uses and trusts in all respects as they were before and at the time such reversion took effect. Provided, that all mineral lands within the limits of this grant and the grant made in section two of this act are hereby reserved to the United States. And provided, further, that all property and troops of the United States shall at all times be transported over said railroad and branches at the cost, charge and expense of the company or corporation owning or operating said road and branches, respectively, when so required by the government of the United States.

SEC. 2. *And be it further enacted*, That there is hereby granted, added to and made part of the donation of lands hereby renewed and made, subject to the same uses and trusts, and under the same custody, control

and conditions, and to be held and disposed of in the same manner as if included in the original grant, all the alternate sections and parts of sections designated by odd numbers lying along the outer line of lands heretofore granted, and within five miles on each side thereof, excepting lands reserved or otherwise appropriated by law, or to which the right of pre-emption or homestead settlement has attached. Provided, that the additional quantity of lands hereby granted, when added to the lands specified in section one hereof, shall not exceed, in the aggregate quantity of lands by this act granted, sufficient to amount to ten sections for each mile of railroad. And provided, further, that the lands embraced in this grant and the grant revived by section one of this act shall be disposed of only as follows: Whenever proof shall be furnished, satisfactory to the secretary of the interior, that any section of ten consecutive miles of said road and branches is completed, in a good, substantial and workmanlike manner, as a first-class railroad, the said secretary of the interior shall issue patents for all the lands granted as aforesaid, not exceeding ten sections per mile, situate opposite to and within the limits of twenty miles of the section of said road and branches thus completed, and when like proof shall be furnished that another section of ten miles of said road in said states, or on the said branches, respectively, connecting with the preceding section, is completed as aforesaid, the secretary of the interior shall issue patents in like manner as in case of the first completed sections, and so on, from time to time, until the whole is completed as herein provided, when the secretary of the interior shall issue patents for all the remaining lands herein granted, not exceeding the aggregate amount provided for and located as required by sections one and two of this act. And provided, further, that if one section of twenty miles of each of said railroads and branches shall not be fully constructed and completed as a first-class railroad within three years from the time this act becomes a law, and at least one section of twenty miles on each of said roads and branches in each year thereafter, and the whole of said roads and branches within ten years from the time this act shall take effect, then and in either of said cases all the lands granted or the grant of which is revived or extended by this act, and which at the time shall be unpatented to or for the benefit of the road or company making or suffering such failure, shall revert to the United States.

SEC. 3. *And be it further enacted*, That all the lands mentioned in this act, and hereby granted, are hereby reserved from entry, pre-emption or appropriation to any other purpose than herein contemplated, for the said term of ten years from the passage of this act. Provided, that all lands heretofore given to the State of Missouri for the construction of the Cairo and Fulton Railroad, or for the use of said road, lying in the State of Missouri, and all lands proposed to be granted by this act for the use or in aid of the road herein named, and lying in said State of Missouri, shall be granted and patented to the said state whenever the road shall be completed through said state, which lands may be held by said state and used toward paying the state the amount of bonds heretofore issued by it to aid said company, and all interest accrued or to accrue thereon. Provided, further, that the provisions of this act, so far as the same relate to the Memphis and Little Rock and the Little Rock and Fort Smith branches of said road, shall not take effect until the secretary of the interior shall make and file a certificate in his office and the office of the secretary of state of Arkansas, stating that the companies or corporations claiming the benefit of this act in behalf of said branches have reorganized their boards of directors in a lawful manner, and, after such reorganization, that they have, respectively, rescinded all acts, resolutions or other proceedings transferring the lands, rights or privileges of such corporations or companies to any convention, state or authority recognizing or acting in concert with or under the authority of the late so-called Confederate States of America.

Approved July 28, 1866.

AN ACT making a grant of lands, in alternate sections, to aid in the construction and extension of the Iron Mountain Railroad, from Pilot Knob, in the State of Missouri, to Helena, in Arkansas.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That there be and is hereby granted to the State of Missouri, for the purpose of aiding in the construction and extension of the Iron Mountain Railroad, from its present terminus at Pilot Knob to a point on the southern boundary line of the State of Missouri, every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road; but in case it shall appear, when the route of said road is definitely fixed, that the United States have sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said state, to select, subject to the approval of the secretary of the interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in sections or parts of sections, to be selected as aforesaid, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached; which lands, thus selected, shall be held by the State of Missouri for the use and purposes aforesaid, and for none other. Provided, that the lands so located shall be within the Ironton land district as now established, and not more than twenty miles from the line of said road. And provided, further, that all mineral lands except those containing coal and iron, and any lands heretofore reserved to the United States by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroad through the same, in which case the right of way only shall be granted, subject to the approval of the president of the United States.

SEC. 2. *And be it further enacted*, That there be and is hereby granted to the State of Arkansas, for the purpose of aiding in the construction and extension of a railroad from the point where the Iron Mountain Railroad intersects the southern boundary line of Missouri, by the nearest and most practicable route, to a point at or near the Town of Helena, on the Mississippi River, every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road; but in case it shall appear, when the line of said road is definitely fixed, that the United States have sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said state to select, subject to the approval of the secretary of the interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, designated as aforesaid, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached; which lands, thus selected, shall be held by the State of Arkansas for the use and purposes aforesaid, and for none other. Provided, that the land so selected and located shall in no case be further than twenty miles from the line of road when the same shall be located. And provided, further, that all mineral lands, except those containing coal and iron, and any lands heretofore reserved to the United States by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be and the same are reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railway through the same, in which case the right of way only shall be granted, subject to the approval of the president of the United States.

SEC. 3. *And be it further enacted*, That the sections and parts of sections of land which shall remain to the United States within ten miles on either side of said road, and the even sections and parts of sections corresponding to the odd ones selected within twenty miles of the same, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same shall have been first offered at public sale to the highest bidder at or above the minimum price as aforesaid. Provided, that actual *bona fide* settlers under the pre-emption laws of the United States may, after the proof of settlement, improvement and occupation, as now provided by law, purchase the same at the increased minimum price. And provided, also, that settlers under the provisions of the homestead law, who comply with the terms and requirements of this [said] act, shall be entitled to patents for an amount not exceeding eighty acres each, anything in this act to the contrary notwithstanding.

SEC. 4. *And be it further enacted*, That the said railroads shall be and remain public highways, so far as the same may be constructed under this act, for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States, and at the costs in all respects of said railroad companies; and the said roads are hereby required to be constructed within the term of five years from and after the first day of July, Anno Domini eighteen hundred and sixty-six.

SEC. 5. *And be it further enacted*, That the lands hereby granted to said States of Missouri and Arkansas shall be disposed of by said states for the purposes aforesaid only, and in the manner following, namely: Whenever the governor of either of said states shall certify to the secretary of the interior that any section of ten consecutive miles of either of said roads is completed in a good, substantial and workmanlike manner, as a first-class railroad, and the said secretary shall be satisfied that said state has complied in good faith with this requirement, the said secretary of the interior shall issue to the said state patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to and within a limit of twenty miles of the line of said section of road thus completed, extending along the whole length of said completed section of ten miles of road, and no further. And when the governor of said state shall certify to the secretary of the interior, and the secretary shall be satisfied, that another section of said road, ten consecutive miles in extent, connecting with the preceding section or with some other first-class railroad which may be at the time in successful operation, is completed as aforesaid, the said secretary of the interior shall issue to the said state patents for all the lands granted and situated opposite to and within the limits of twenty miles of the line of said completed section of road or roads, and extending the length of said section and no further, and not exceeding ten sections of land per mile for all that part of said road thus completed under the provisions of this act and the act to which this is an amendment, and so, from time to time, until said roads and branches are completed. And when the governor of said state shall so certify, and the secretary of the interior shall be satisfied, that the whole of any one of said roads and branches is completed in a good, substantial and workmanlike manner, as a first-class railroad, the said secretary of the interior shall issue to the said state patents to all the remaining lands granted for and on account of said completed road and branches in this act, situated within the said limits of twenty miles from the line thereof, throughout the entire length of said road and branches. Provided, that no land shall be granted or conveyed to said states under the provisions of this act on account of the construction of any railroad or part thereof that has been constructed under the provisions of any other act, at the date of the passage of this act, and adopted as a part of the line of railroad provided for in this act. And provided, that nothing herein contained shall interfere with any existing rights acquired under any law of congress heretofore enacted making grants of land to the said States of Missouri and Arkansas to aid in the construction of railroads. And provided, further, that should said states, or either of them, fail to complete the roads herein recited within the time prescribed by this act, then the lands undisposed of as aforesaid, within the states so failing, shall revert to the United States.

SEC. 6. *And be it further enacted*, That so soon as the governor of either of said states shall file or cause to be filed with the secretary of the interior maps designating the routes of said roads herein mentioned, then it shall be the duty of the secretary of the interior to withdraw from market the lands embraced within the provisions of this act.

SEC. 7. *And be it further enacted*, That nothing contained in this act shall be held as vesting in the State of Arkansas title to the lands herein recited for the trust purpose aforesaid, or authorizing said state to make any disposition of the same, until said state shall be restored in all respects to its former relation to the national government and be represented in the congress of the United States.

Approved July 4, 1866.

AN ACT to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That an act approved July twenty-eight, eighteen hundred and sixty-six, entitled "An act to revive and extend the provisions of 'An act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point upon the Mississippi River opposite the mouth of the Ohio River, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River,' approved February nine, eighteen hundred and fifty-three, and for other purposes," be so amended as to extend the time to the Little Rock and Fort Smith Railroad Company for building the first section of twenty miles provided for in the second section of said act, for the term of three years from the thirteenth day of May, eighteen hundred and sixty-seven, the time of filing the certificate of organization to said company provided for in the third section of said act. Provided, that the land granted by the act hereby revived shall be sold to actual settlers only, in quantities not greater than one-quarter of a section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Approved April 10, 1869.

A RESOLUTION extending the time for the completion of the first section of twenty miles of the Cairo and Fulton Railroad.

Resolved, by the senate and house of representatives of the United States of America, in congress assembled, That in case the Cairo and Fulton Railroad Company shall complete the first section of twenty miles of said road by the twentieth day of December, eighteen hundred and seventy, and the secretary of the interior shall be satisfied of such completion, then the said company shall be entitled to its lands in all respects and to the same extent as it would have been had said twenty miles been completed by the twenty-eighth of April, eighteen hundred and seventy, as provided by law relating to said railroad company.

Approved May 6, 1870.

AN ACT to amend an act entitled "An act to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road," approved April ten, eighteen hundred and sixty-nine.

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the proviso of an act entitled "An act to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road," approved April ten, eighteen hundred and sixty-nine, be and the same hereby is repealed.

Approved March 8, 1870.

NATURALIZATION.

NATURALIZATION LAWS OF THE UNITED STATES.

SECTION 1. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction and a seal and clerk, two years at least prior to his admission, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly by name to the prince, potentate, state or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall at the time of his application to be admitted declare on oath before some one of the courts above specified that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, and particularly by name to the prince, potentate, state or sovereignty of which he was before a citizen or subject, which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall in addition to the above requisites make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen on due proof made to some one of the courts above specified that he has

resided two years at least within the jurisdiction of the United States, and one year at least immediately preceding his application within the state or territory where such court is at the time held; and on his declaring on oath that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly by name to the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and also on its appearing to the satisfaction of the court that during such term of two years he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person without a certificate of such declaration of intention makes application to be admitted a citizen, it must be proved to the satisfaction of the court that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 2. The declaration of intention to become a citizen of the United States, required by section one, may be made by an alien before the clerk of any of the courts named in said section, and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.

SEC. 3. Any alien, of the age of twenty-one years and upward, who has enlisted or may enlist in the armies of the United States, either the regular or the volunteer forces, and has been or may be hereafter honorably discharged, shall be admitted to become a citizen of the United States upon his petition without any previous declaration of his intention to become such, and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and

good moral character as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

SEC. 4. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section one; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his *bona fide* intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

SEC. 5. When any alien who has complied with the first condition specified in section one dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such upon taking the oaths prescribed by law.

SEC. 6. The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity, and to persons of African descent (*).

SEC. 7. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

SEC. 8. No alien who is a native citizen or subject, or a denizen, of any country, state or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the 18th day of June, 1812, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

SEC. 9. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens

(*) A native of China, of the Mongolian race, is not entitled to become a citizen of the United States under this section. He is not a "white person" within the meaning of the term as used in the naturalization laws. *In re Ah Yup*, 5 Sawyer C. C., 155.

thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

SEC. 10. The police court of the District of Columbia shall have no power to naturalize foreigners.

SEC. 11. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen. *Rev. Stat. U. S., title 30.*

SEC. 12. Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen. *Ib., sec. 1994.*

DIGEST
OF THE
STATUTES OF ARKANSAS.

CHAPTER I.

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217. Person presumed dead appearing, estate to be restored.

CERTAIN PROCEEDINGS HAD IN MATTERS OF ADMINISTRATION DECLARED VALID.

218. Proceedings had in probate court between the sixth day of May, 1861, and the first day of June, 1865, declared valid.
- 219, 220, 221, 222, 223. Proceedings in the probate court under "Chapters of the Digest" declared valid.

LETTERS—BY AND TO WHOM GRANTED.

SECTION 1. It shall be the duty of the courts of probate in term time, or the clerks thereof in vacation, subject to the confirmation or rejection of the court, to grant letters testamentary and of administration. *Rev. Stat., chap. 4, sec. 1; Act April 16, 1873, sec. 6.*

SEC. 2. Letters testamentary and of administration shall be granted in the county in which the testator or intestate resided; or, if he had no known residence, and lands be devised in the will or the intestate die possessed of lands, such letters shall be granted in the county where the lands lie, or one of them if they lie in several counties; and, if the deceased had no such place of residence and no lands, such letters may be granted in the county in which the testator or intestate died, or where the greater part of his estate may be. *Rev. Stat., chap. 4, sec. 2.*

SEC. 3. When any one shall die leaving a widow or children, and it shall be made to appear to the probate court that the estate of the deceased does not exceed three hundred dollars (b), the court shall make an order that the estate

(b) Although the probate court may fall to make an order vesting the entire estate of a deceased husband in the widow when it does not exceed three hundred dollars, she may, in a proceeding to compel her to account for the estate, show that it did not exceed that sum, and thus avail herself of the benefit of the statute. *Hampton v. Physick*, 24—561. The word "estate" in this and the next section means the whole mass of the decedent's property, both real and personal, and, if it is of less value than three hundred dollars, is given by the law *proprio vigore* to the widow; or, if no widow, to the minor children of the deceased, and an order of the probate court is not necessary to vest it. *Harrison v. Lamar*, 33—824. The proceeding of the probate court to declare the estate in the widow is *in rem*, and no notice to the heirs is necessary. *Ib.*

The value of both the real and personal property of an estate is to be estimated in determining whether it may be vested in the widow; but if the remainder interest in the homestead and the personal property are, together, of less value than eight hundred dollars, the widow may retain absolutely three hundred dollars of the property and continue her occupation of the homestead. *Word v. West*, 38—243.

vest absolutely in the widow or children, as the case may be; and in all cases when the estate does not exceed eight hundred dollars the widow or children, as the case may be, shall be entitled to retain the amount of three hundred dollars of the property at cash price. *Act Jan. 2, 1851.*

SEC. 4. When any man shall die leaving minor children and no widow, and his estate shall not be above the value of three hundred dollars, his entire estate shall pass to and vest in his minor children for their support and education, and the probate court shall not be required to appoint an administrator on such estate. *Act Jan. 12, 1853.*

SEC. 5. It shall not be the duty of the clerk or court to issue letters of administration on the estate of any deceased person, unless it shall in the opinion of said clerk or court be necessary to preserve such estate from waste or damage, or to protect the rights of creditors. *Act Dec. 21, 1846, sec. 2.*

SEC. 6. Letters testamentary or of administration shall in no case be granted to a clerk of the court of probate or his deputy; to a person of unsound mind, under the age of twenty-one years, or to a married woman; nor shall an executor of an executor, in consequence thereof, be the executor of the first testator. *Rev. Stat., chap. 4, sec. 3.*

SEC. 7. Letters of administration shall be granted to the representatives of the intestate who may apply for the same and are qualified, preferring first the husband or wife, or one of the persons entitled by law to a distribution of the intestate's estate, as the court or clerk may be of the opinion will best manage and improve the estate; and if no such person applies for letters within thirty days after the death of the intestate, letters of administration may be granted to any creditor of the intestate who may apply for the same within sixty days after the death of the intestate, or to such other person as the court may appoint; and the court, or clerk thereof in vacation, on the application of any person interested, may issue a citation to any person entitled to administration as aforesaid, calling on him to take out letters of administration. *Ib., sec. 4.*

SEC. 8. If such person shall neglect to appear and take out letters within ten days after the service of such citation, such neglect shall be considered as a renunciation, by such person, of the administration. *Ib., sec. 5.*

SEC. 9. In such case, and in all others where the person entitled to administration shall file his renunciation thereof in writing with the clerk of the court of probate, letters of administration shall be granted to the person next entitled thereto. *Ib., sec. 6.*

SEC. 10. After the probate of any will, letters testamentary shall be granted to the person therein appointed executor, if qualified.

SEC. 11. If there are more persons than one named as executors in the will, and a part of them refuse to act, or are disqualified, the letters shall be granted to the other persons appointed therein (c). *Ib., secs. 7 and 8.*

SEC. 12. If all such persons refuse to act, or are disqualified, letters of administration, with the will annexed, shall be granted to the person to whom administration would have been granted if there had been no will. *Ib., sec. 9.*

(c) Where two or more persons are named as executors, the renunciation or refusal of one to join or take upon himself the execution of a will can not be evidenced by acts *in pais*, but must be shown by matter of record. *Newton's exr. v. Cocke, exr.*, 10—169.

The authority of an executor relates to the grant of administration to him by the probate court, and not to the mechanical issuance of letters testamentary as evidence of his authority. *Ludlow v. Flournoy*, 34—451.

SEC. 13. If the validity of any will be contested, or the executor be a minor, or absent from the state, letters of administration shall be granted during the time of such contest, minority or absence to some other person, who shall take charge of the property and administer the same, according to law, under the direction of the court, and account for, pay and deliver all moneys and property of the estate to the executor or regular administrator, when qualified to act. *Ib.*, sec. 10.

SEC. 14. Neither letters testamentary nor of administration shall be granted to any non-resident of this state; and if any person to whom letters testamentary or of administration shall be granted shall, before he makes a final settlement, become a non-resident of this state, he shall thereby forfeit such letters, and the court shall, on motion of any person interested, revoke and set aside the letters testamentary or of administration granted such executor or administrator, and grant administration to any other person qualified (d). *Act Dec. 31, 1850, secs. 1 and 4.*

AFFIDAVIT TO BE MADE BEFORE GRANT OF LETTERS.

SEC. 15. Every person applying for letters of administration shall, at the time of making such application, make and subscribe an affidavit, stating, to the best of his knowledge and belief, the value of the estate, the names and residences of the heirs of the deceased, if known, that the deceased died without a will, that he will make a perfect inventory of, and faithfully administer, all and singular, the goods and chattels, rights and credits of the deceased, and pay his debts, as far as the assets which may come to his hands will extend and the law direct, and that he will account for and pay over, according to law, all assets which shall come to his hands or possession. *Rev. Stat., chap. 4, sec. 11.*

SEC. 16. Such affidavit shall be made in open court, or before the clerk in vacation; and a similar affidavit, with such variations as the case may require, shall be made by every administrator *de bonis non*, and by an administrator during a contest about a will or the minority or absence of an executor. *Ib.*, sec. 12.

SEC. 17. Every administrator, with the will annexed, and executor, at the time letters are granted to him, shall make and subscribe an affidavit that he will make a true and perfect inventory of the estate, and faithfully execute the last will of the testator, pay the debts and legacies as far as the assets will extend and the law direct, render just accounts of his administration, and faithfully perform all things required by law touching such administration or executorship. *Ib.*, sec. 13.

BOND TO BE GIVEN BEFORE GRANT OF LETTERS.

SEC. 18. The court of probate, or the clerk thereof in vacation, subject to the approval or rejection of the court in term time, shall take a bond from the person to whom letters of administration are granted, with two or more sufficient securities, residents of the county, to the State of Arkansas, in such sum as the court or clerk shall deem sufficient—not less than double the amount of the estimated value of the estate. *Ib.*, sec. 14.

(d) The removal of an executor or administrator from the state does not *eo instanti* vacate his letters. This requires the action of the court, on motion. *McCreary v. Taylor*, 38—393; *Haynes v. Semmes*, 39—399.

SEC. 19. Such bond shall be conditioned as follows: "The condition of the above obligation is such that if the above bounden A. B., administrator of all and singular the goods and chattels, rights and credits of C. D., deceased, shall make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of the deceased which have or may come to the hands, possession or knowledge of him, the said A. B., or into the hands or possession of any other person for him, and the same, so made, shall return and exhibit in the office of the clerk of the court of probate, for the county of —, within sixty days from the date of the above obligation, and all and singular the goods and chattels, rights and credits of the deceased which shall come to the hands, possession or knowledge of him, the said A. B., he shall well and truly administer according to law, and pay the debts of the deceased as far as his assets will extend and the law direct; and, further, make or cause to be made just and true accounts of his administration, and make due and proper settlement thereof, from time to time, according to law or the lawful order, sentence or decree of any court having competent jurisdiction, and shall moreover well and truly do and perform all other matters and things touching such administration that are or may be prescribed by law, or enjoined on such administrator by the lawful order, sentence or decree of any court having competent jurisdiction, then the above obligation to be void and of no effect; otherwise to remain in full force and virtue." *Ib.*, sec. 15.

SEC. 20. A similar bond, with such variations as the case may require, shall be given by all executors and administrators, with the will annexed, or of the goods, chattels and effects remaining unadministered during the time of a contest about any will, or of the minority or absence of an executor. *Ib.*, sec. 16.

SEC. 21. No sheriff, clerk of any court, or the deputy of either, or attorney at law, shall be taken as security in the bond of any executor or administrator, unless by special permission of the court of probate, and such permission shall be entered on the record. *Ib.*, sec. 17.

SEC. 22. The court, or the clerk in vacation, shall take special care to take as securities persons who are solvent and sufficient, and who are not bound in too many other bonds; and the court or clerk may take testimony, or examine on oath the applicant, or the persons offered as securities, in order to be satisfied of their solvency. *Ib.*, sec. 18.

BONDS AND LETTERS TO BE RECORDED, AND COPIES EVIDENCE.

SEC. 23. The clerk of the court of probate shall record in a well-bound book, to be kept for that purpose, all bonds given by executors and administrators, and present all such bonds as may have been taken in vacation to the court at the first term after the taking of the same, for confirmation, and an entry shall be made in the record of such court of the confirmation or rejection of any such bond. *Ib.*, sec. 19.

SEC. 24. It shall also be the duty of such clerk to record, in a book to be kept for that purpose, all letters testamentary and of administration granted by the court or clerk in vacation. *Ib.*, sec. 20.

SEC. 25. If any clerk of the court of probate shall deliver any letters testamentary or of administration to any executor or administrator without record-

ing the same, he may be fined by the court in any sum not exceeding one hundred dollars. *Ib.*, sec. 21.

SEC. 26. Copies of such letters testamentary or of administration, and the official bonds given by executors or administrators, legally authenticated, shall be evidence in the same manner as the originals. *Ib.*, sec. 22.

FORM OF LETTERS.

SEC. 27. All letters testamentary to be issued to executors shall be in the following form: "County of —, ss. The State of Arkansas to all persons to whom these presents shall come, greeting: Know ye, that the last will and testament of A. B., of —, deceased, hath in due form of law been exhibited, proved and recorded in the office of the clerk of the court of probate for — county, a copy of which is hereunto annexed; and inasmuch as it appears that C. D. has been appointed executor, in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby authorize him, the said C. D., as such executor, to collect and secure all and singular the goods and chattels, rights and credits which were of the said A. B., at the time of his death, in whosoever hands or possession the same may be found; and to perform and fulfill all such duties as may be enjoined upon him by said will, so far as there shall be property and the law charge him; and in general to do and perform all other acts which now are or hereafter may be required of him by law.

"In testimony whereof, I, A. B., clerk of the circuit court (or county clerk) and *ex officio* clerk of the court of probate in and for the said county of —, have hereunto set my hand and affixed the seal of said court, at office in —, this — day of —, A. D. 18—. A. B., Clerk."

SEC. 28. Letters of administration shall be in the following form: "County of —, ss. The State of Arkansas to all persons to whom these presents shall come, greeting: Know ye, that whereas, A. B., of the county of —, died intestate, as it is said, on or about the — day of —, A. D. 18—, having at the time of his death personal property in this state which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that the said property may be collected, preserved and disposed of according to law, we do hereby appoint C. D., of the county of —, administrator of all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of the said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law.

"In testimony whereof, I, A. B., clerk of the circuit court (or county clerk) and *ex officio* clerk of the court of probate in and for the county of —, aforesaid, have hereunto set my hand and affixed the seal of said court, at office, this — day of —, A. D. 18—. A. B., Clerk."

SEC. 29. In all cases where letters of administration, with the will annexed, letters of administration *de bonis non*, during minority or absence, shall be issued, the same shall be in conformity with the foregoing forms as near as may be. *Ib.*, secs. 23, 24, 25.

WHEN LETTERS TO BE REVOKED.

SEC. 30. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be made, such letters shall be revoked by the court of probate, and letters testamentary or of administration, with the will annexed, be granted. *Ib.*, sec. 26.

SEC. 31. If any will be proved, and letters testamentary thereon granted, and such will be afterward set aside, the letters testamentary shall be revoked, and letters of administration *de bonis non* granted. *Ib.*, sec. 27.

SEC. 32. If an executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of the testator or intestate, nor shall the administration thereof devolve on him; but such marriage shall extinguish her powers, and her letters shall be revoked, and letters of administration, with the will annexed, or *de bonis non*, shall be granted to some person entitled thereto, or such person as the court may deem most suitable (e). *Ib.*, sec. 28.

SEC. 33. If any executor or administrator shall become of unsound mind, or waste or mismanage the estate, or act so as to endanger his co-executor, the court of probate, upon complaint in writing, made by any person interested, supported by affidavit, and fifteen days' previous notice of the time and place of hearing such complaint having been given to the person complained of, shall hear such complaint, and if it be found just, the letters shall be revoked. *Ib.*, sec. 29.

WHEN NEW BOND MAY BE REQUIRED.

SEC. 34. If any heir, legatee, creditor, or security, or other person interested in any estate, shall file in court an affidavit stating that the affiant has reason to believe that any security in the executor's or administrator's bond has become, or is likely to become, insolvent, or has died, or has removed from the state, or that the principal in such bond has become, or is likely to become, insolvent, or is wasting the estate, or that the penalty of such bond is insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond fifteen days' notice of the time and place of hearing such complaint, the court shall examine the same and make such order as shall seem proper (f). *Ib.*, sec. 30.

SEC. 35. If an additional bond be given and approved, it shall discharge the former securities from any liability for the misconduct of the principal, after the filing such additional bond; and such former securities shall only be liable for such misconduct as happened prior to giving the new bond (g). *Ib.*, sec. 31.

SEC. 36. If such person shall fail to give such additional security as may be required by the court within ten days after the making of the order requiring additional security, his letters shall from thenceforth be revoked, and his authority from that time cease. *Ib.*, sec. 32.

SEC. 37. It shall be the duty of the probate judge, at the first term held after the first day of January in each year, to examine all executors', administrators' and guardians' bonds, and, if it shall appear to the court that any of

(e) See *Collins v. Warner*, 32—91; *Whittaker v. Wright*, 35—511.

(f) See *Rufro v. White*, 23—195; *Vulcort v. Sessions*, 30—515; *Collier v. Kilcrease*, 27—10.

(g) See *State v. Stroop*, 22—328.

such bonds are or have become insufficient from any cause whatever, the court shall make an order that the bonds so found to be insufficient be strengthened and perfected within ten days from the date of such order, and that, upon the failure of any executor, administrator or guardian to comply with the order of the court, his letters be revoked. *Act March 24, 1883.*

RESIGNATION, DEATH OR REMOVAL OF EXECUTOR OR ADMINISTRATOR.

SEC. 38. If any executor or administrator shall make application to resign his administration, it shall be the duty of the court to examine such application, and, if it should be of opinion that no material injury will result to the estate in consequence of such resignation, to make an order accepting the resignation of such executor or administrator, and from that time all his powers shall cease. *Rev. Stat., chap. 4, sec. 33.*

SEC. 39. The court shall in no case accept the resignation of any executor or administrator until he shall have exhibited his accounts as far as he may have proceeded in such administration. *Ib., sec. 34.*

SEC. 40. If there be more than one executor of any estate, and the letters of part of them be revoked or surrendered, or part die, those who remain shall discharge all the duties required by law touching such estate. *Ib., sec. 35.*

SEC. 41. If all the executors or administrators of any estate die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration *de bonis non* shall be granted to the person to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration, or to such other person as may be appointed by the court; and such administrator shall perform the like duties and incur the like liabilities as the former executor or administrator (h). *Ib., sec. 36.*

SEC. 42. If any executor or administrator die or resign, or his letters be revoked, he, or his legal representative, shall account for, pay and deliver to his successor, or the surviving or remaining executor, all money and personal property, and all the rights, credits, deeds, evidences of debt and papers of any kind belonging to the estate of the deceased, at such time and in such manner as the court shall order; and such court, in case of a refusal to comply with such order, shall have power to enforce the same by attachment. *Ib., sec. 37.*

SEC. 43. The succeeding administrator or the remaining executor may proceed at law against the delinquent and his securities, or either of them, or any other person having in his possession any part of the estate. *Ib., sec. 38.*

POWER OF EXECUTOR BEFORE PROBATE OF WILL.

SEC. 44. The power of the executor over the testator's estate before probate of the will and obtaining letters testamentary shall extend to the burial of the deceased in a manner suitable to his condition, the payment of the necessary

(h) The extent of the power and authority of an administrator *de bonis non* is simply to collect and administer such property and effects of the deceased unadministered as remain in specie and are capable of being identified as the specific property or estate represented by him. *Finn v. Hempstead*, 24—111. He can not sue the representative or sureties of a former administrator for property of his intestate lost, wasted, mismanaged or converted by him. Only creditors, legatees, distributees or others interested in the estate can maintain such action. *State v. Rottaken*, 34—144; *Ludlow v. Flourney*, *Ib.*, 451; *Williams v. Cubage*, 36—307.

funeral expenses, and the taking care of the estate; but in such cases, if the will shall be rejected when presented for probate and such executor never qualify, he shall not be liable, as an executor, of his own wrong, unless he refuse to deliver up the estate to the person authorized to receive the same (i). *Ib.*, sec. 41.

SEC. 45. The preceding section shall not be so construed as to exempt any person claiming to be executor as aforesaid from liability for any waste or mismanagement of such estate. *Ib.*, sec. 42.

INVENTORY AND APPRAISEMENT.

SEC. 46. Every executor and administrator, immediately after receiving his letters, shall collect and take into possession the goods and chattels, moneys, books, papers and evidences of debt of the testator or intestate, except the property reserved by this act as the absolute property of the widow; and he shall make a true and perfect inventory thereof, describing the books and papers, the debts due or to become due to the deceased, the names of the debtors, the date of the contract, the amount of interest due thereon, the rate of interest and such further descriptions as will render it a perfect inventory of the estate. *Ib.*, sec. 43.

SEC. 47. Each executor or administrator shall annex to such inventory an affidavit, stating that it is a full inventory and description of all the moneys, goods, chattels, books, papers and evidences of debt and of all debts due or becoming due, as far as he has been able to ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory. *Ib.*, sec. 44.

SEC. 48. Such inventory and affidavit shall be filed in the office of the clerk within sixty days after the letters are granted. *Ib.*, sec. 45.

SEC. 49. If, after making the first inventory, any other personal property shall come to the possession or knowledge of the executor or administrator, he shall file an additional inventory, similar to the inventory required by the preceding provisions of this act. *Ib.*, sec. 46.

SEC. 50. If any executor or administrator, or other person interested in any estate, shall file in court an affidavit stating that the affiant has good cause to believe that any person in such affidavit named has concealed or embezzled any goods, chattels, moneys, books, papers or evidences of debt of the deceased, the court shall have power to cause such person to appear before it and examine him on oath for the discovery of the same. *Ib.*, sec. 47.

SEC. 51. If the person so cited shall fail to appear, the court shall have power to compel his attendance by attachment, and, if such person shall, after his appearance, refuse to answer proper interrogatories, the court may commit him to jail until he answer or be otherwise discharged according to law. *Ib.*, secs. 48 and 49.

SEC. 52. If any such person shall be convicted of unlawfully detaining any such goods, chattels, moneys, effects, books, papers or evidences of debt,

(i) Under our administration system, an executor *de son tort*, as at common law, is unknown. *Rust, ex. v. Witherington*, 17—129. See also *Barasien v. Odum*, *Ib.*, 122; *Diamond v. Shell*, 15—26; *McDearmon v. Mayfield*, 29—631.

the court may compel the delivery thereof to the executor or administrator entitled to receive the same by attachment (j). *Ib.*, sec. 50.

SEC. 53. It shall be the duty of every executor and administrator, immediately after having the personal estate of the deceased collected, to cause the same to be appraised by three disinterested householders of the county, who, before entering on their duties, shall make an affidavit that they are not interested, nor of kin to any person interested, in the estate as heir or legatee, and that they will, according to the best of their abilities, view and appraise the personal property to them produced. *Ib.*, sec. 51.

SEC. 54. Such appraisers shall view and appraise such property, and make a list thereof, specifying each article appraised and its value, and showing the total amount of the appraisement, which shall be signed by the appraisers, or any two of them. And each of them shall be entitled to receive for his services the sum of one dollar for each day he may be engaged in appraising any estate, to be allowed as expenses of administration. *Ib.*, secs. 52 and 55.

SEC. 55. Such appraisement and the affidavit of the appraisers shall be filed in the office of the clerk within sixty days after letters are granted. *Ib.*, sec. 53.

SEC. 56. Every executor or administrator shall cause similar appraisements to be made and filed of all personal estate which shall come to his possession after the first appraisement. *Ib.*, sec. 54.

SEC. 57. The inventories and appraisements may be given in evidence, but shall not be conclusive for or against the executor or administrator. Other evidence may be admitted to vary the effect thereof. *Ib.*, sec. 56.

SEC. 58. It shall be the duty of the clerk to record in a well-bound book or books all inventories, appraisements and sale bills filed by executors, administrators and guardians in his office, or in the probate court of his county.

SEC. 59. The clerk shall receive for recording the papers named in the preceding section the same fees as are allowed by law for similar services in the probate court. *Act of March 21, 1881.*

NOTICE TO CREDITORS, ETC.

SEC. 60. Within thirty days after letters testamentary or of administration are granted on any estate, the executor or administrator shall advertise at the court-house door for six weeks, and, if ordered by the court, shall publish in some newspaper (k) printed in this state for six weeks, a notice that letters testamentary or of administration have been granted to him, stating the date thereof, and requiring all persons having claims against the estate to exhibit the same to the executor or administrator, properly authenticated, within one year after the date of such letters, or they may be precluded from any benefit in the estate, and that if such claims be not exhibited within two years from the date of such letters they shall be forever barred and precluded from any benefit from such estate (l). *Rev. Stat., chap. 4, sec. 57.*

(j) For the construction given to sections 50, 51, 52, see *Moss v. Sandefur*, 15—381.

(k) See SECS. 4356—4360.

(l) It is the duty of the executor or administrator, at his official peril, to give the notice to creditors required by the statute, but this is not a condition precedent to the exhibition of claims within the required period. *Bennett et al. v. Dawson et al.*, 15—412.

SEC. 61. When any intestate has left no known heirs the administrator shall, in addition to the notice required in the preceding section, publish a notice for six weeks, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity, if known, and the appraised value of his estate. *Ib.*, sec. 58.

WIDOW'S ALLOWANCE.

SEC. 62. In addition to dower (*), a widow shall be allowed to keep as her absolute property all the wearing apparel of the family, her wheels, looms and other implements of industry; all yarn, cloth and clothing made up in the family for their own use; such grain, meat, vegetables, groceries and other provisions on hand as may be necessary for the subsistence of the widow and her family for twelve months, and as many beds, with bedding, and such other household and kitchen furniture as shall be necessary for herself and the family of the deceased residing with her and under her control; nor shall any property acquired by the widow be sold to pay any debts of her husband contracted before marriage, nor shall such property be embraced in the schedule of the effects of his estate, should the same be deemed insolvent (m). *Ib.*, sec. 62.

SEC. 63. In addition to the property specified in the preceding section, the widow, when the estate is not insolvent, may take such personal property as she may wish, not to exceed the appraised value of one hundred and fifty dollars, and the executor or administrator shall deliver to the widow such articles as she may select, not exceeding the value aforesaid, and shall take her receipt therefor, which shall be a good voucher in the settlement of his accounts. *Ib.*, sec. 63.

SEC. 64. The widow shall apply for such property before it is distributed or sold, and not after. *Ib.*, sec. 64.

SEC. 65. No widow shall be required to give bond and security to refund any portion of the property of the deceased, selected by her before she receives the same. *Ib.*, sec. 129.

SEC. 66. Until the widow's dower be apportioned, the court shall order such sum to be paid to her out of the rent of the real estate as shall be in proportion to her interest therein. *Ib.*, sec. 139.

SEC. 67. If, upon the return of the inventory and appraisement of any estate, it shall appear, to the satisfaction of the court, that the whole amount of the estate is not more than that to which the widow is by law entitled, without being subject to the payment of the debts, and that there are no debts due the estate, or that they are so small that they would not defray the expenses of administration, the court, in its discretion, may make an order that such estate be delivered to the widow, and that all further proceedings under said administration be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with (†). *Ib.*, sec. 140.

(*) The widow is entitled, as part of her dower, absolutely and in her own right, to one-third part of the personal estate, including cash on hand and choses in action. SEC. 2591.

(m) The widow is entitled to the articles specified in this section unconditionally, and against the rights of heirs and creditors. *Hill's adm. v. Mitchell*, 5—608. She takes the amount of property allowed her by section 63 absolutely against heirs and distributees, but not against creditors. *Ib.* In what cases the probate court shall make the widow commutation for the provisions, etc., see *Green as guardian v. Ford admx.*, 17—586. Notwithstanding this exemption of property acquired by the widow, the husband may sell or devise the estate. *Refeld et al. exrs. v. Bellette et al.*, 14—148.

(†) See SECS. 3, 4.

LANDS—ASSETS.

SEC. 68. Lands shall be assets in the hands of the executor or administrator, and shall be deemed in their possession and subject to their control for the payment of debts (n). *Act Dec. 21, 1846, sec. 2.*

SEC. 69. All improvements made on the public lands of the United States by a testator or intestate shall be assets in the hands of the executor or administrator, unless the same may have been disposed of by will (o). *Rev. Stat., chap. 4, sec. 72.*

LANDS MAY BE RENTED—WHEN AND HOW.

SEC. 70. The judge may in vacation authorize and empower administrators and executors to rent out the lands and tenements in their possession and under their control, as such administrators and executors. *Act Feb. 21, 1859, sec. 1.*

SEC. 71. Before the judge shall authorize the renting of real estate it shall be the duty of such administrator or executor to present his petition in writing, verified by affidavit, showing the condition of such real estate and the reason why such application was not made in term time, and if, upon reading such petition, the said judge shall be satisfied that it will be to the interest of the estate to rent out the real estate, he shall indorse an order upon such petition authorizing the renting out of the real estate for a time not exceeding one year, and such petition so indorsed shall be filed by the said judge in the office of the clerk of the proper county. *Ib., sec. 2.*

GROWING CROP.

SEC. 72. If any person die, leaving a crop ungathered or in an unfinished state, so that the estate would suffer loss from the want of care and additional labor, the executor or administrator may, until the meeting of the court, procure such labor to be performed as may be indispensable to the saving of such crop, and the court may in such cases authorize such further labor to be performed as the interest of the estate may require, and all sums of money paid for any such labor, if approved by the court, shall be allowed as expenses of administration. *Rev. Stat., chap 4, sec. 71.*

SALE OF PERSONAL ESTATE., ETC.

SEC. 73. The personal estate of deceased persons shall not be sold unless the same be ordered by last will and testament or by direction of the court; and when so ordered or directed the executor or administrator shall sell the same at public sale, giving such credit as he may deem most advantageous to the estate, not exceeding twelve months, and taking bonds or notes with good and sufficient security from the purchaser (p). *Ib., sec. 65, and Act Dec. 21, 1846, sec. 1.*

(n) But see *secs. 6 and 10 of art. IX of the Constitution*. See also *Carnall v. Wilson*, 21—62; *Tate v. Jay*, 31—576. As to rents and profits received by an administratrix before assignment of dower, see *Mock v. Pleasants*, 34—63.

(o) See *Cain v. Leslie*, 15—312.

(p) A debt contracted by an intestate can not be set off against one contracted with his administrator in favor of the estate, because it interferes with the course of administration. *Bizzell et al. v. Stone et al.*, 12—378. An executor or administrator to whom notes are executed for personal property and rent of land of his

SEC. 74. Whenever it shall be made to appear to the satisfaction of the court, by the affidavit of the administrator, that there is a debt due said estate which can not be realized in money, the court may authorize said administrator to compromise said debt upon such terms as it may direct, and to receive property for the same. *Act Dec. 11, 1848, sec. 1.*

SEC. 75. All property acquired by any administrator by virtue of the foregoing section shall be sold in such manner as the court may direct. *Ib., sec. 2.*

SEC. 76. When it shall be made to appear to the satisfaction of the court, by the affidavit of the executor or administrator, that there is a debt due said estate which can not be realized in money or property under existing laws, the court may make an order authorizing the sale of the same at public auction upon such terms as it may direct. *Act Jan. 19, 1855, sec. 1.*

SEC. 77. No administrator or executor shall offer at public vendue any choses in action as hereinbefore provided until he shall have used due diligence to collect the same, and the court shall be fully satisfied that said demands can not be collected, and willing to allow said executor or administrator credit therefor in his annual settlement as a desperate claim (*). *Ib., sec. 2.*

SEC. 78. When any sale shall take place, as prescribed in section seventy-six, it shall be the duty of the executor or administrator to indorse thereon that the same was sold by order of the court, which indorsement, so made as aforesaid, shall vest the legal title therein in the holder thereof, and shall be *prima facie* evidence that said sale was made in due form of law. *Ib., sec. 3.*

SEC. 79. If it shall be made to appear to the satisfaction of the judge by the petition of any administrator of any intestate estate, supported by his affidavit, that all or any portion of the personal property of the estate of his intestate is liable to waste, be lost or greatly depreciate, it shall and may be lawful for the judge to make an order in vacation authorizing said administrator to sell the same in the manner prescribed by law. *Act Nov. 29, 1852, sec. 1.*

SEC. 80. Said order shall be in writing, certified to by said judge, and be by him filed with the clerk, whose duty it shall be, without delay, to spread the same upon the record. *Ib., sec. 2.*

SEC. 81. Said administrator shall make a report of said sale to the next term of the court. *Ib., sec. 3.*

SEC. 82. Every executor or administrator shall give notice of the time and place of the sale of personal property by advertisements put up in five of the most public places in the county at least twenty days before the day of sale. *Rev. Stat., chap. 4, sec. 66.*

SEC. 83. If any testator direct his personal estate not to be sold, the same shall be reserved from sale, unless such sale be necessary for the payment of debts. *Ib., sec. 67.*

SEC. 84. At every public sale the executor or administrator shall employ a competent auctioneer and a clerk, not interested in the estate, nor of kin to any heir or legatee of the estate; and such clerk shall keep a true account of the sales made, make a list of sales, specifying each article sold, the price for

testator or intestate holds them in his fiduciary capacity as a part of the general assets of the estate, and has no power by assignment as collateral security or otherwise to appropriate them to the payment of one creditor to the exclusion of others. *Payne, Huntington & Co. v. Flournoy, 29—500.*

(*) See note (jj) to SEC. 122.

which it was sold and the name of the purchaser, and shall annex to such list an affidavit stating that the same is a true account of the sales made by such executor or administrator at the time specified. *Ib.*, sec. 68.

SEC. 85. Such list of sales, with the affidavit of the clerk annexed thereto, shall be filed in the office of the clerk within thirty days after such sale. *Ib.*, sec. 69.

SEC. 86. It shall be the duty of the court, at each term thereof, to examine all inventories and sale-bills filed since the last term of such court, to see if they have been made and filed according to law, and to cause citations to be issued to compel all delinquents to comply with the law. *Ib.*, sec. 76.

SEC. 87. Every executor or administrator, on settling his accounts, shall be charged with and be accountable for the net proceeds of the sale of all personal property sold by him under the provisions of this act, notwithstanding the same may amount to more or less than the appraised value thereof. *Ib.*, sec. 79.

SALE OF WILD STOCK.

SEC. 88. If any executor or administrator shall represent to the court, on oath, that there is wild stock belonging to the estate of his testator or intestate which he is unable to collect or command, the court may order such executor or administrator to proceed and sell such stock at public auction, without taking an inventory or making an appraisal thereof, on such credit as the court may deem reasonable, not exceeding nine months, taking bonds or notes with good and sufficient security from the purchaser. *Ib.*, sec. 164.

SEC. 89. The court shall require the executor or administrator to give fifteen days' notice of the time and place of such sale by advertisements set up in at least six of the most public places in the county in which such stock shall be described as near as possible, and the number and in what neighborhood they range. *Ib.*, sec. 165.

SEC. 90. The executor or administrator making such sale shall, at the next term of the court thereafter, make return of such sales, and the court shall charge him with the amount thereof, which shall be accounted for as other assets. *Ib.*, sec. 166.

MONEY, INTEREST, ETC.

SEC. 91. If, on the return of any inventory, or at any other time, it shall appear to the satisfaction of the court that there is a surplus of money in the hands of any executor or administrator that will not shortly be required for the expenses of administration or the payment of debts, such court shall have discretionary power to order the executor or administrator to lend out such money on such time and on such security as may be approved by the court. *Ib.*, sec. 75.

SEC. 92. All interest received by executors and administrators shall be assets in their hands; and, if they lend the money of the deceased, or use it for their private purposes, they shall be chargeable with interest thereon for the use of the estate. *Ib.*, sec. 73.

SEC. 93. The court shall exercise equitable control in making executors and administrators accountable for interest accruing to the estate on account of money loaned by them belonging to the estate, or otherwise, and for that pur-

pose may take testimony or examine the executor or administrator on oath (q). *Ib.*, sec. 74.

SEC. 94. All executors and administrators may give receipts and discharges for money received by them on account of the deceased; but, if there be more than one executor, a majority shall join in such receipt or discharge, or it shall be void. *Ib.*, sec. 78.

SEC. 95. If any person shall appoint his debtor executor of his last will and testament, such appointment shall not extinguish the debt, but it shall be assets in his hands. *Ib.*, sec. 61.

DEMANDS AGAINST ESTATES.

SEC. 96. Executors and administrators may assign the notes and bonds belonging to the estate to creditors, legatees and distributees, in discharge of such amount of their claims as will be equal to the amount of notes or bonds assigned (r). *Ib.*, sec. 77.

SEC. 97. An executor or administrator may establish any demand he may have against his testator or intestate, by presenting and proving the same to the satisfaction of the court (*); and the court shall not allow any claim in favor of an executor or administrator against his testator or intestate, unless on legal and competent testimony; and the same affidavit shall be required of an executor or administrator as is required of other claimants. *Ib.*, sec. 102.

SEC. 98. All demands against the estate of any deceased person shall be divided into the following classes:

First. Funeral expenses.

Second. Expenses of the last sickness (s), wages of servants and demands for medicines and medical attendance during the last sickness.

Third. Judgments rendered against the deceased in his life-time, and which are liens on the lands of the deceased, if he died possessed of any; otherwise to be regarded as debts due by contract (t).

Fourth. All demands, without regard to quality, which shall be exhibited to the executor or administrator, properly authenticated, within one year after the first granting of letters on the estate.

Fifth. All such demands as may be exhibited as aforesaid after the end of one year and within two years after the first letters granted on the estate; and all demands not exhibited to the executor or administrator, as required by this

(q) The statute for computing interest in ordinary cases of delayed debts has no application to cases in which fiduciaries upon equitable principles become chargeable with compound interest; and probate courts have the same discretion to compound interest, as to fiduciaries under their supervision, as appertains to a chancellor. *Price v. Peterson*, 38—494.

(r) An executor or administrator has no power to sell, assign or dispose of a note or debt due the testator or intestate in payment of one creditor before it is, upon settlement, ascertained how much is due him, and to the exclusion of others; and such sale or transfer vests no title. *Whittaker v. Wright*, 35—511.

(s) An administrator is a trustee, and can not speculate on claims against the estate. He will be allowed only what he pays for them, and interest. *Wolf v. Banks*, 41—104; *Trimble v. James*, 40—393.

(t) The estate of a deceased person in the hands of his administrator is not liable to pay for medical services rendered to the family of deceased after his death. *Bomford et al. v. Grimes as adm.*, 17—367.

(u) But a claim founded on such judgment loses its priority if not presented to the administrator within one year after the grant of his letters, and should then be classed in the fifth class. *Krith v. Parks*, 31—664.

Where a creditor has acquired a specific lien on particular property of his debtor during his life-time, it may be enforced, after his death, without resorting to the general assets of his estate through the probate court. *Barber v. Peay*, *Ib.*, 392; *Richardson v. Hickman*, 32—406; *McClure v. Owens*, *Ib.*, 443.

act, before the end of two years from the granting of letters shall be forever barred (u). *Ib.*, sec. 80.

SEC. 99. All actions pending against any person at the time of his death, which, by law, survive against the executor or administrator, shall be considered demands legally exhibited against such estate from the time such action shall be revived, and shall be classed accordingly (v). *Ib.*, sec. 81.

SEC. 100. All actions commenced against any executor or administrator after the death of the testator or intestate shall be considered demands legally exhibited against such estate, from the time of serving the original process on the executor or administrator, and shall be classed accordingly. *Ib.*, sec. 82.

SEC. 101. Any person may exhibit his claim against any estate as follows: If the demand be founded on a judgment, note or written contract, by delivering to the executor or administrator a copy of such instrument, with the assignment and credits thereon, if any, exhibiting the original; and if the demand be founded on an account, by delivering a copy thereof, setting forth each item distinctly and the credits thereon, if any (w).

SEC. 102. And the claimant shall also append to his demand an affidavit of its justice, which may be made by himself, or an agent, attorney or other person. If made by the claimant, it shall state that nothing has been paid or delivered toward the satisfaction of the demand, except what is credited thereon, and that the sum demanded, naming it, is justly due. If made by any other person, it shall state that the affiant is acquainted with the facts sworn to, or that he has made diligent inquiry and examination, and that he verily believes nothing has been paid or delivered toward the satisfaction of the demand, except the amount credited thereon, and that the sum demanded is justly due (x). *Act Jan. 27, 1843, sec. 1; Act March 5, 1867, sec. 2; Act March 13, 1867, sec. 1.*

SEC. 103. Before any executor or administrator shall pay or allow any such debt, the same shall be sworn to as aforesaid (y). *Rev. Stat., chap. 4, sec. 87.*

(u) This applies to and runs against non-residents as well as resident claimants. *Erwin v. Turner*, 6—14. The two years statute of non-claim, and not the general statute of limitation, gives the rule of limitation to claims against the estates of deceased persons not barred at the time of the death of the debtor. *Biscoe v. Madlin*, 17—533, and cases cited. All demands subsisting at the time of the death of the testator or intestate, whether matured or not, capable of being asserted in a court of justice, whether of law or equity, must be exhibited within two years; also all coming into existence at any time after the death, and before the expiration of the two years. *Bennett v. Dawson*, 18—334.

Upon the death of a trustee, his indebtedness to the trust becomes a demand against his estate, to be authenticated, allowed, classed and paid out of the assets of his estate as other demands. *Patterson v. McCann*, 39—577; *Hill v. State*, 23—604. The statute of non-claim is a bar to the claims of the state, if not presented within the time prescribed, as in the case of individuals. *Hill v. State*, 23—604. The exhibition of a claim, properly authenticated, to an administrator, arrests the statute of non-claim; and the law does not limit the time of presentment to the court for classification. *Randolph v. Ward*, 29—238.

The claim of a ward against the estate of a deceased guardian must be presented to his administrator within two years after the grant of administration, whether there has been a final settlement of the guardianship or not. *Connelly v. Weatherly*, 33—658.

(v) Although no affidavit is required upon the revival of actions under this section, yet, if they are not revived against the executor or administrator within two years from the grant of letters, the claim will be barred. *Goodrich v. Fritz*, 9—440; *State Bank v. Tucker*, 15—39. After judgment of revival no presentation of the claim to the administrator is necessary. *Eddins v. Graddy*, 28—500.

(w) Upon the presentation of a claim for allowance, the administrator is entitled to, and may require the claimant to furnish him, a copy of the account or evidence of debt upon which the claim is founded. But the administrator may waive the copy. As to what would be a waiver see *Borden v. Fowler*, 14—471; *Grimes v. Bush*, 16—647; *Grimes v. Booth*, 19—224; *Bellows v. Cheek*, 20—424; *Leake & Harvey v. Sutherland*, 25—219; *Randolph v. Ward*, 29—238.

(x) See *Mahan v. Owen*, 23—347; *Mason v. Bull, Ellis & Co.*, 26—164; *Smith v. Van Gilder*, *Ib.*, 527.

(y) As to officers authorized to take affidavits, see SECS. 2917, 2918.

SEC. 104. In case of a debt due a corporation, the cashier or treasurer shall make the affidavit required in the preceding section. *Ib.*, sec. 88.

SEC. 105. When an affidavit shall be required to be made by an officer of a corporation, executor, administrator or assignee, it shall be sufficient to state in such affidavit "that he has made diligent inquiry and examination, and that he does verily believe that nothing has been paid, except the amount credited, and that the sum demanded is justly due" (z). *Ib.*, sec. 89.

SEC. 106. If the debt be assigned after the debtor's death, affidavit shall be made by the person who held the debt at the death of the debtor, as well as the assignee. *Ib.*, sec. 90 (*).

SEC. 107. If the affidavit required for authenticating claims against deceased persons be not produced in an action against an executor or administrator for a debt against the deceased, the court shall, on motion, enter a judgment of nonsuit against the plaintiff; and the affidavit must appear to have been made prior to the commencement of the action (aa). *Ib.*, sec. 91.

SEC. 108. If suit be brought for any debt due from a deceased person, without exhibiting to the executor or administrator an affidavit, made pursuant to law, and if such suit be not controverted, the court shall enter judgment against the plaintiff for costs (bb). *Ib.*, sec. 92.

SEC. 109. If the executor or administrator shall be satisfied that the claim thus exhibited against the estate of his testator or intestate is just, he shall indorse thereon his approval and allowance of the same, and the time it was exhibited. *Ib.*, sec. 84.

SEC. 110. Every executor and administrator shall keep a list of all demands legally exhibited against the estate of his testator or intestate, and class the same, and make return of such list to the court every year at the term at which he is required to make settlement (cc). *Ib.*, sec. 85.

SEC. 111. It shall be the duty of every person having claims against the

(z) An affidavit by an officer of a corporation in a form prescribed by statute, omitting the words "that the sum demanded is justly due," is sufficient. *State, use, etc., v. Collins, adm.*, 16—23.

(*) But see SEC. 102; *Stone v. Kaufman*, 25—186.

(aa) In the collection of claims against the estates of deceased persons, claimants may proceed by action according to the forms of the common law, or before the probate court in the summary manner prescribed by our statutes on administration. In the common law form of action, as well as in the summary proceeding before the probate court, if the plaintiff fail to produce an affidavit of the justice and non-payment of the claim, made before the commencement of the suit, on motion of defendant he may be nonsuited under this section; and this may be done at any time before final judgment, though defendant has no pleas in. SEC. 108 merely provides for the exhibition of such affidavit to the executor or administrator before suit is brought, and, in case of failure, imposes the penalty of costs upon the plaintiff. There is no conflict between the two sections, etc. *Ryan et al., use, etc., v. Lemon, as adm.*, 7—78. See also *Beirne & Burnside v. Imboden et al.*, 14—237; *Alter v. Kinsworthy*, 30—756.

This section does not apply to actions pending and undetermined at the death of the party. *Pope's exr. v. Ashley's exr.*, 13—262.

(bb) If the suit be controverted, it is not indispensable that the affidavit be exhibited before suit brought. *Maddin, adm., v. State Bank*, 13—276. A judgment obtained in the circuit court against an administrator as such can not be executed until the estate is settled in the probate court. *Adameon et al. v. Cummins et al.*, 10—541.

(cc) Where suit is brought against an administrator, and a judgment obtained for a debt due by the intestate, it is the duty of the administrator to return such claim to the probate court for classification, and no other presentation or notice of his claim is required of the creditor, nor approval by the administrator. *Clark, admx., et al. v. Shelton*, 16—474.

Real estate belonging to the estate of a deceased person can not be taken in execution and sold on judgments, either in federal or state courts; but judgment creditors, like all others, are remitted to the court exercising probate jurisdiction, to receive payment or their *pro rata* out of the assets of the estate, in due course of administration. *Horner v. Hanks*, 22—572; *Yonley v. Lavender*, 27—252.

But see *Barber v. Peay*, 31—392, and note (t) *ante*. The vendor's equitable lien is not affected by the probate and allowance of the claim against the estate of the vendee. *Turner v. Horner*, 29—440.

estate of any deceased person, after having exhibited his claim to the executor or administrator, as required, and after the same has been approved and allowed by him, to file the same, together with a copy of the notice served on the executor or administrator, in the office of the clerk; and said clerk shall, at the next term of the court after the filing of any such claim, present the same to the court for classification; and the clerk shall note the same on his record, stating the name of the claimant, and against whose estate the same is exhibited, the amount thereof, its class, and the date of filing the same. *Ib.*, sec. 86.

SEC. 112. If any executor or administrator shall refuse to allow any claim or demand against the deceased, after the same may have been exhibited to him in accordance with law, such claimant may present his claim to the court for allowance, giving the executor or administrator ten days' notice of such application to the court (dd). *Ib.*, sec. 95.

SEC. 113. The court shall have power to hear and determine all demands against any estate made, agreeably to the provisions of this act, and cause a concise entry of the order of allowance to be made on the record, which shall have the same force and effect as a judgment (ee). *Ib.*, sec. 96.

SEC. 114. No demand against any estate shall be presented to the court for allowance until after the executor shall have refused to allow and class the same; and in all such cases, if the claimant be allowed his claim by the court, he shall be entitled to his costs. *Ib.*, sec. 99.

SEC. 115. The court shall hear and determine all demands presented for allowance under this act, in a summary manner, without the forms of pleading, and in taking testimony shall be governed by the rules of law in such cases made and provided (ff). *Ib.*, sec. 100.

SEC. 116. If neither party require a jury, the court shall decide the validity of the claim, and allow or disallow it; but, if either party require a jury, the court shall direct a jury to be forthwith summoned. *Ib.*, sec. 101.

SEC. 117. The clerk shall keep an abstract of all demands established in the court, or allowed and approved by the executor or administrator, against any estate, which shall show the amount, class and date of filing each claim, and in whose favor. *Ib.*, sec. 103.

(dd) The clause of this section requiring notice to be given the executor or administrator of such application is imperative. The probate court can take no jurisdiction of his person until the notice is given or waived. *Pennington v. Gibbon*, 6—147. See also *State Bank v. Walker*, 14—234; *Hudson v. Breeding*, 7—446.

A waiver of notice indorsed on a claim is tantamount to a rejection and reference of it to the probate court. *Randolph v. Ward*, 29—238.

An order of the probate court allowing a claim against an estate, presented for allowance at a term subsequent to the term at which the administrator was notified that it would be presented, is without jurisdiction of the person of the administrator and void. *Baskins v. Wilds*, 39—347. But if the administrator appears and does any substantive act in the cause, before judgment, it will be a waiver of notice. *Ib.*, 352; *Leake & Harcey v. Sutherland*, 25—219.

(ee) The allowance and classification of a claim are conclusive after the expiration of the term, and the court has then no power to set it aside. *Coelet et al. v. Biscoe*, 12—95; *McMorris, adm., v. Overholt*, 14—244; *Wright v. Campbell & Strong*, 27—637.

Illegality in the allowance of a claim can not be set up in a collateral proceeding. *Mays v. Rogers*, 37—155. Such allowances are not barred by the statute of limitations, and there is no necessity for reviving them. *Ib.*; *Rose v. Thompson*, 36—254; *Fort v. Blagg*, 38—471.

Money advanced by a creditor to an administrator to improve the real estate of his intestate, and to protect it against an attachment suit, should be allowed, if at all, as expenses of administration. *Nathan v. Lehman, Abraham & Co.*, 39—256.

Claims for necessary or useful personal services rendered an estate at the instance of an administrator, and not within his personal duties, may be presented to the probate court, not for allowance and classification, but for an order on the administrator to pay them as expenses of administration. *Yarborough v. Ward*, 34—204.

(ff) See *Connelly v. Weatherly*, 33—658.

SEC. 118. All demands against any estate shall be paid by the executor or administrator, in the order in which they are classed; and no demand of one class shall be paid until the claims of all previous classes are satisfied; and, if there be not sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts, which apportionment shall be made by the court (gg). *Ib.*, sec. 104.

SEC. 119. In any case where a person, dying intestate, leaves a minor child, it shall be the duty of the court, upon the application of the guardian of such minor, should the estate be evidently solvent, to make such allowance, from time to time, for the maintenance and education of such minor as the court may deem necessary and proper; and the court shall order and direct the administrator or executor to pay the same to the guardian; the amount of which allowance so paid to the guardian shall, upon a final settlement of the administration and distribution of the estate, be charged against such minor, and be deducted from his share or distributive portion of the estate. *Act Jan. 17, 1855, sec. 2.*

SEC. 120. In all cases where minors when they arrive at their majority will have any estate due them, but have no guardian, the court having jurisdiction of the matter may, at its discretion, make an order directing the administrator or other person having control of the estate due, or that will be due, to such minor, to pay over, from time to time, such amount as the court may think proper for the support and education of said minor (hh). *Act Feb. 1, 1859, sec. 1.*

SETTLEMENT.

SEC. 121. Every executor or administrator shall, at the first term of the court after one year from the date of his letters, and at the corresponding term of said court every year thereafter until the administration be completed, present to such court a fair written statement or account current, in which he shall charge himself with the whole amount of the estate according to the sales-bill and appraisement, including all debts due the estate and money on hand at the death of the deceased, and credit himself with all sums of money lawfully expended in settling such estate, either by the payment of debts or otherwise, exhibiting with such account the receipts and vouchers for all moneys paid out (ii). *Rev. Stat., chap. 4, sec. 105.*

SEC. 122. Such account shall be carefully examined by the court, and upon such examination the court shall allow such executor or administrator for all debts with which he stands charged which such court shall be satisfied could

(gg) See *Jackson v. McNabb*, 39—111.

(hh) See *Martin v. Campbell*, 35—137; *Perry v. Field*, 40—175.

(ii) The failure of an executor or administrator to present his account annually for settlement, as prescribed by this section, is a breach of the condition of his bond, for which any person interested in the estate may maintain an action. *Scarborough v. State*, 24—20. An executor is not entitled to a credit in the annual settlement of his accounts for payments, without order of court, to legatees or distributees; such payments are at the peril of the executor, and, though valid as between him and the legatee or distributee, not so as to others having paramount rights in the estate. *McParton, adm., v. Dickson et al.*, 15—41.

If an executor or administrator claim credit in his settlement with the probate court for an illegal expenditure, the court should reject it, although it may have previously approved the expenditure and authorized him to take credit for it. *Burk v. Coolidge*, 35—180.

An administrator is not in his settlement accountable for waste, whatever his liability therefor may be otherwise. *Reynolds v. C. & B. Co.*, 33—520.

not be collected (jj), and shall allow the executor or administrator any sum not exceeding ten per centum on all sums less than one thousand dollars, and on all sums over one thousand dollars and less than five thousand five per centum, and on all sums over five thousand three per centum for his risk and trouble in attending to the settlement of such estate (kk). *Ib.*, sec. 106.

SEC. 123. No executor or administrator shall be allowed to take credit for the percentage or fees on the estate of his testator or intestate at any annual settlement required by law to be made, except on such part of such estate as may be fully administered at the time of filing such settlement. *Act. Jan. 6, 1851, sec. 1.*

SEC. 124. In no case shall any executor or administrator be allowed percentage on any bonds, bills, notes or open accounts due his testator or intestate which shall be returned by him as unavailable. *Ib.*, sec. 2.

SEC. 125. No estate of any deceased person, or any part thereof, shall be more than once charged with percentage or fees for administering and settling the same. *Ib.*, sec. 3.

SEC. 126. After allowing the executor or administrator all just credits on his accounts, the courts shall strike the balance and determine what sums remain on hand; and such account, when approved and confirmed by the court, shall be entered at full length by the clerk of such court in a well-bound book, to be kept by him for that purpose. *Rev. Stat., chap. 4, sec. 107.*

SEC. 127. Every account presented to the court by any executor or administrator for settlement or confirmation shall, without being acted on, be continued until the next term of such court, subject to the inspection and examination of all persons interested in the settlement of such estate. *Ib.*, sec. 108.

SEC. 128. Any person interested as heir, legatee or creditor may file exceptions to such account, or any item thereof, on or before the second day of the term of said court to which such account may be continued; and, if exceptions are not filed within the time specified, such account shall be examined and confirmed as hereinbefore provided, and such account when confirmed shall never thereafter be subject to investigation, unless in a court of chancery, upon the allegation of fraud in the settlement of such account, supported by the affidavit of the party making such allegation (ll.) *Ib.*, sec. 109.

(jj) The destruction or larceny of notes does not entitle the administrator to a credit for them. They may still be sued upon as lost instruments and collected. *Williams v. Cubage*, 36—307.

(kk) This section fixes the compensation of an administrator for his entire trouble and risk in attending to the settlement of an estate, and not merely for collecting its debts. The probate judge may allow as such compensation the maximum per cent. upon the value of the estate fixed by the statute, or it may, in the exercise of a sound discretion, allow less than the maximum, according to the circumstances of the case. *Bell, ex parte*, 14—76.

The administrator is entitled to no commission on the proceeds of a sale of property belonging to his intestate made under a decree in chancery foreclosing a mortgage. *Reynolds v. C. & B. Co.*, 30—520. Upon appeal from a probate court confirmation of an administrator's account of settlement, he may be allowed commissions in the circuit court, though he credited himself with none and none were allowed by the probate court. *Williams v. Cubage*, 36—307.

See also *Tiner v. Christian*, 27—306.

(ll) The final settlement of executors with the probate court is a record which can not be impeached in a collateral proceeding, but only by a direct proceeding in chancery for fraud. *Dooley et al. v. Dooley et al.*, 14—122; *Mock v. Plaints*, 34—63; *Shoggy v. Perkins*, *Ib.*, 117.

As to what will constitute a fraudulent settlement, see *Ringgold v. Stone*, 20—526; *Stone v. Stillwell*, 23—444; *Osborne v. Graham*, 30—66; *Reinhardt v. Gartrell*, 33—727; *Jones v. Graham*, 36—383.

SEC. 129. Immediately after the adjournment of each term of the court, it shall be the duty of the clerk to give notice by advertisement in some newspaper printed in the county, if there be any printed in such county, and, if none be printed there, by advertisements set up on the court-house door of said county and in the office of such clerk, of the several executors or administrators who may have, at such term of the court, filed their accounts for settlement and confirmation, calling on all persons interested in the settlement of any such estates to come forward and file exceptions to such accounts, if any they have, on or before the second day of the next term of the court for said county, or they will be forever barred from excepting to such accounts or any item thereof; and the expenses of such advertisement shall be allowed by the court as expenses of administration (mm). *Ib.*, sec. 110.

SEC. 130. The names of all such administrators or executors shall be inclosed in one and the same notice, and the expenses of such advertisement shall be allowed by the court as other expenses of administration. *Act Jan. 19, 1855.*

SEC. 131. When exceptions shall have been filed to the account current of any executor or administrator, or any item thereof, the court shall hear and determine the same (*) at the term at which such exceptions may be filed, unless for good cause shown, when a continuance may be granted. *Rev. Stat., chap. 4, sec. 111.*

SEC. 132. The court may, if it be deemed expedient or necessary, refer any such account, with the exceptions against the same, to a master or commissioner to be examined and restated, and such master or commissioner shall be governed according to the rules laid down for the government of a master in chancery in auditing accounts (nn). *Ib.*, sec. 112.

SEC. 133. In matters of exception to the account of any executor or administrator, the court or master or commissioner may examine testimony for and against such exception, and shall restate such account if it shall be found incorrect. *Ib.*, sec. 113.

SEC. 134. Every master or commissioner to whom the account of any executor or administrator may be referred shall examine, and make report of such examination on the first day of the term of the court after the reference; and any person interested may except to such report, within the same time that is allowed for filing exceptions to the report of a master in chancery; and such exceptions shall be determined by the court at the same term at which they are made. *Ib.*, sec. 114.

The discharge of an administrator by the probate court is only for so much of the funds belonging to the estate as is found by his settlement to be in his hands. He will still be liable for funds received and not accounted for. *West v. Waddill*, 33—575.

Mere illegal allowances to an administrator, not obtained by misrepresentation or deception upon the court, are no grounds for impeaching or setting aside a settlement in equity. The remedy is by appeal. *Mock v. Pleasants*, 31—33.

Persons under disabilities are not bound by their failure to except to administrators' settlements, and will be heard after their disabilities are removed to make out a case of fraud to their prejudice. *Riley v. Norman*, 39—158.

An order confirming an administrator's settlement, if erroneous, can be corrected only by appeal; but chancery may interfere to correct fraud, or relieve against accident, or upon some other ground of acknowledged equity jurisdiction, to prevent irremediable mischief. *Trimble and wife v. James, adm.*, 40—393.

(mm) All persons interested in the settlement of an administrator are charged with notice of its filing. *Jones v. Graham*, 36—383.

(*) A trial by a jury in the probate court of exceptions to an account is not contemplated by law. *Crow v. Reed*, 38—482.

(nn) For rules governing masters in chancery see SECS. 5259-5276.

SEC. 135. If the court or the master or commissioner shall find the account of any executor or administrator incorrect, such account shall be correctly stated, and, when so corrected, shall be confirmed by the court, and entered of record as required by the preceding provisions of this act. *Ib.*, sec. 115.

SEC. 136. Each clerk shall keep a docket, and enter therein a list of all executors and administrators who have not made final settlements of their accounts, the date of their letters and the time at which they are required to make settlement, and such clerk shall put up, in some conspicuous place in his office, twenty days before each term of the court, a list of all executors and administrators whose settlements are required to be made at that term of the court. *Ib.*, sec. 116.

SEC. 137. If any executor or administrator shall fail to present his account for settlement at the time prescribed by this act, it shall be the duty of the clerk to issue a citation to any county in the state where any such delinquent executor or administrator may reside, requiring him to present his accounts for settlement at the next term of the court, and show cause why an attachment should not be issued against him for not having presented his accounts according to law. *Ib.*, sec. 117.

SEC. 138. If such citation be returned not served, the clerk shall, under direction of the court, issue an *alias* citation, which may be served on the party, or may be published in a newspaper thirty days before the return day thereof (*); and if, after such service or publication, no cause be shown why such settlement was not made as required, such executor or administrator may be fined in any sum not exceeding five hundred dollars, and such executor or administrator, and his securities, shall be liable, on his official bond, for all fines and forfeitures imposed on him, and for all damages sustained by reason of such failure to settle his accounts according to law. *Ib.*, sec. 118.

SEC. 139. The court shall have power to issue attachments and all other process necessary to compel the settlement of executors' or administrators' accounts, and enforce the judgments and decrees of such court. *Ib.*, sec. 119.

SEC. 140. In all cases where citation or attachment may be issued against any executor or administrator, for failing to settle his accounts, such delinquent shall pay all costs incurred thereby. *Ib.*, sec. 120.

SEC. 141. If any executor or administrator shall fail to make settlement as required by law, and shall not show good cause for such failure, the court, after a service of a citation on the delinquent, may revoke his letters. *Ib.*, sec. 40.

SEC. 142. At every settlement the court shall ascertain the amount of money which may have come to the hands of the executor or administrator from all sources, and the amount of claims allowed by the court, or passed by the executor or administrator, against the estate; and if there should not be sufficient to pay the whole of the debts and expenses of administration, the money remaining, after the expenses of administration are paid, shall be apportioned among the creditors according to the provisions of this act (oo). *Ib.*, sec. 121.

SEC. 143. The court shall order the executor or administrator to pay the claims exhibited against the estate, according to such apportionment, reserving the amount apportioned for claims which remain undecided in his hands until such claims are decided. *Ib.*, sec. 122.

(*) See SECS. 4356-4360.

(oo) See *Quinlan v. Fitzpatrick & Teague*, 25-471.

SEC. 144. If, upon such settlement, there shall be assets enough to satisfy all demands of any one class, legally exhibited against the estate, and legally entitled to be paid, the court shall order the executor or administrator to pay all the claims of such class.

SEC. 145. If any executor or administrator shall fail to pay any claim ordered to be paid as aforesaid when demanded, the clerk shall, on application, and being satisfied, by the affidavit of the applicant, that such demand has been made, issue execution for the amount ordered to be paid to such claimant and costs against the goods chattels, lands and tenements of such executor or administrator (pp). *Ib.*, secs. 123, 134.

SEC. 146. If such execution be returned not satisfied, the claimant may sue out of the court a *scire facias* against the securities of such executor or administrator, referring to the official bond and the order for payment, the execution and the return thereon, requiring such securities to show cause why judgment should not be rendered against them for the amount of such claim, ordered to be paid as aforesaid. *Ib.*, sec. 125.

SEC. 147. Such *scire facias* may be directed to any county of this state; and, upon the return thereof, duly served, if good cause to the contrary be not shown, the court shall render judgment against such security for the amount of the claim ordered to be paid, as aforesaid, and remaining unpaid, together with costs, and issue execution thereon. *Ib.*, sec. 126.

LEGACIES AND DISTRIBUTION.

SEC. 148. No executor or administrator shall be compelled to pay legacies or distributive shares, unless the same are of a perishable nature or subject to injury, until two years after the date of his letters, unless ordered by the court so to do; and not then until bond, with good and sufficient security, be given by the legatee, or distributee, to refund his proportion of any debt which may afterward be established against the estate, and the costs attending the record thereof (qq). *Ib.*, secs. 127, 128.

SEC. 149. If, at any settlement, it shall appear to the court that there are sufficient assets to pay all demands against the estate, an order shall be made requiring the payment of legacies, or distributive shares, and requiring security, as aforesaid. *Ib.*, sec. 130.

SEC. 150. The payment of legacies or distributive shares may be compelled by attachment or execution against the executor or administrator. *Ib.*, sec. 131.

SEC. 151. Each person entitled to a distributive share of any estate, and not applying for distribution, shall be notified in writing of any such application at least ten days before any such order shall be made; or, if such distributee is a non-resident of this state, a notice of such application shall be published in some newspaper in this state at least six weeks before any such order shall be made (rr). *Ib.*, sec. 133.

SEC. 152. If, after the payment of legacies or distributive shares, it shall become necessary that the same, or any part thereof, be refunded for the pay-

(pp) See *Rose v. Thompson*, 36—254.

(qq) To render the title of a legatee to a specific legacy complete and perfect, previous to the time allowed for the settlement of the estate of the testator, the assent of the executor is indispensably necessary. *Ross et al., exrs., v. Davis*, 17—113, and cases cited. See also *Oliver v. Vance*, 34—564; *McDearman v. Martin*, 38—261.

(rr) See SECS. 4356—4360.

ment of debts, the court shall, on application, apportion the same among the legatees or distributees according to the amount received by them, except that specific legacies shall not be required to be refunded, unless the residue be not sufficient to pay the debts. *Ib.*, sec. 137.

SEC. 153. If any legatee or distributee shall fail to refund, according to such order, the court shall, on motion of the executor or administrator, ten days' notice having been given to the legatee or distributee and his security, enter judgment against such legatee or distributee and his security for the amount ordered by the court to be refunded by him. *Ib.*, sec. 138.

SEC. 154. If, upon the final settlement of any estate, it shall appear that any legatee or distributee is a non-resident, or from other causes is not in a situation to receive his share of the estate and give a discharge therefor, or does not appear, by himself or agent, to receive the same, the court may, in its discretion, order the executor or administrator to lend the same on good security, to be approved of by the court, for such limited time as the court may direct (ss). *Ib.*, sec. 140.

SEC. 155. No executor or administrator shall be held responsible for the money ordered to be loaned by the court, in case of the insolvency of the person to whom the loan may be made and his security. *Ib.*, sec. 141.

SEC. 156. Whenever any executor or administrator shall have made final settlement of his accounts with the court, by which the balance in his hands distributable to the heirs or legatees shall be ascertained, and shall have paid over to the distributees, or legatees, or the guardian of any minor legatee or distributee, their share of the estate, such executor or administrator may file in court an abstract of such payments, and the receipt of the legatees, distributees or guardians; and at the term of the court after which such abstract and receipt are filed the court shall examine the same, and if no objections be made thereto, and none appear from the face of the papers, they shall be allowed and entered of record; and such executor or administrator shall, by such allowance, be discharged from so much of the sum found by such settlement with the court as aforesaid to be in his hands as the persons whose receipts are so allowed are entitled to (tt). *Ib.*, sec. 143.

SALE OF REAL ESTATE (uu).

SEC. 157. The sale and conveyance of any lands and tenements authorized to be sold by any last will and testament shall be made by the executors, or such of them as shall undertake the execution of such will, or by the survivor, or by the administrator, with the will annexed, if no other person be appointed in such will for that purpose, or if the person so appointed refuse to perform the trust or die before he shall have completed the same. *Ib.*, sec. 144.

(ss) An administrator is not authorized to invest in real estate, or otherwise, the balance in his hands, as such; but should distribute it to the representatives of the intestate, if known; if unknown, put it out at interest, under direction of the court, until called upon to pay it over. *Wheat et al. v. Moss et al.*, 16—243.

(tt) The widow has no distributive share of the estate. *Hill's adm. v. Mitchell*, 5—608; but she now takes one-third of the personal estate absolutely as dower. SEC. 2591. See also SEC. 2599.

(uu) Where application is made to the court by an administrator for an order to sell real estate of his intestate, any person interested in the subject matter may, on proper showing to the court, make himself a party to the proceedings, and appeal therefrom to the circuit court. *Marr, ex parte*, 12—84. A sale of the real estate of a deceased person, made under the order of the court, conveys the legal title, though the proceedings

WHEN ORDERED FOR BENEFIT OF ESTATE.

SEC. 158. Upon a proper showing, to be made by the administrator of the estate of any deceased person, or the executor of the last will and testament of any such person, the probate court shall have power to order the sale and conveyance of any lands belonging to such estate, whenever in the judgment of such court it would be materially of advantage to the estate to make such sale, and to reinvest the proceeds of the sale in other lands, or securities of any kind, or apply the same to the preservation and protection of such estate.

SEC. 159. Any executor or administrator applying to have such order of sale made shall first give at least twenty days' notice of the time of making such application to the probate court by notice in some newspaper published in the county where the administration is pending, or, if there be no newspaper published in said county, by at least five written or printed notices put up in the most public places of such county.

SEC. 160. The petition for such sale shall set forth the reasons making it of advantage to the estate to make sale of said lands, and shall be sworn to by the petitioner.

SEC. 161. Any person interested in the estate may appear and resist the said proceedings by showing that due notice of such application has not been given, that the petition of such executor or administrator is not in accordance with the requirements of this act, or that it will not be of advantage to the estate to sell such lands, and upon the hearing of said petition the court shall order the sale of all the lands set forth in said petition, or any part thereof, or may refuse to order the sale of any of said lands, as it may deem most for the interest of the estate.

SEC. 162. Either party to said proceeding may appeal from any final order or judgment rendered therein to the circuit court, on the same terms as appeals are allowed from the final judgments of the probate courts; and on such appeal the matter shall be heard *de novo* in the circuit court, which court shall make all such orders and judgments in the premises as should have been made by the probate court, and shall proceed to carry the same into effect.

SEC. 163. Said proceeding shall be commenced in the probate court of the county in which the administration is pending; and, if any of the lands included in the proceeding shall lie in another county, the petitioner shall also give notice by putting up a notice at the court-house door of the county in which such lands lie for the period prescribed in section one hundred and fifty-nine; and in any case when the court shall not be satisfied that notice has been given as required by this act, the court may continue the cause and direct the proper notice to be given before the next term of the court.

may have been irregular, such court having competent jurisdiction of the subject matter. *Bennett et al v. Owens et. al.*, 13—177; *Sturdy and wife v. Jackoway*, 19—499; *George v. Norris*, 23—121.

The executor or administrator of an estate has no interest in the lands of an intestate and no control over them, save as it may be necessary to subject them to the payment of general creditors. *Kiernan v. Blackwell*, 27—235.

An executor derives his powers from the will. If it authorizes him to sell lands he may do so without the order of any court; and, in the absence of fraud, his receipt to the purchaser for the purchase money is a sufficient discharge. *Ludlow v. Flournoy*, 34—451. But an administrator has no authority to sell the real property of his intestate except in the manner prescribed by the statute. *Burganer v. Laird*, 26—256.

SEC. 164. Whenever the court shall order a sale of lands under the provisions of this act, it shall first cause the lands to be appraised by three disinterested householders of the county in which said court is held or in which the lands to be appraised lie, who shall first take an oath in writing that they will well and truly appraise the lands, the description of which shall be included in their appraisal, according to the best of their ability.

SEC. 165. The said executor or administrator, having caused said appraisal to be made, shall proceed to sell the said lands, in separate tracts, to the highest bidder at the court-house door of the county in which the land may lie, on some day to be fixed by him, and between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, said sale to be on a credit of not less than three months, as the court may direct, bond and security to be given by the purchaser, to the approval of the said executor or administrator, and a lien to be retained on the land for the payment of the purchase money. Notice of the time and place of said sale shall be given in some newspaper published in the county in which such lands lie, if any such there be, and by at least five written or printed advertisements put up in the most public places of such county; but if at such sale the lands, or any part thereof, shall not bring two-thirds of their appraised value, the same shall be withheld from sale, and shall not be again offered for sale during the period of six months ensuing, and not then unless upon a new appraisal to be made by the order of the court, in which case the second sale shall be conducted in all respects as the first sale is required to be conducted.

SEC. 166. On making any sale as aforesaid, the executor or administrator shall execute to the purchaser a certificate of purchase, reciting such purchase and conditioned for the execution of a deed of conveyance to the purchaser on payment of the purchase money, which deed shall be made by such executor or administrator on payment of the purchase money, subject to the approval of the court.

SEC. 167. No sale under the provisions of this act shall be ordered unless it shall appear that the bond of the executor or administrator is sufficient in amount and sufficiently secured to make good all amounts which may come to his hands from the sale of the said lands, and from all other sources.

SEC. 168. The money arising from such sales shall, under the orders of the probate court, be applied to the purposes for which such sale was made.

SEC. 169. This act shall not apply to any lands which may have been specifically devised by the deceased. *Act of Dec. 13, 1875.*

SALE TO PAY DEBTS—PETITION FOR BY ADMINISTRATOR.

SEC. 170. Lands and tenements shall be assets in the hands of every executor or administrator for the payment of the debts of the testator or intestate (*). *Rev. Stat., chap. 4, sec. 145.*

SEC. 171. If any testator be the owner of lands and tenements at the time of his death of which no provision is made by will, or if any person, being the owner of lands and tenements, die intestate, and such testator or intestate shall not have sufficient personal estate to pay his debts, it shall be the duty of

(*) See art. IX, secs. 6 and 10, *Const.*

the executor or administrator to apply to the court of probate (**) by petition, describing said lands and containing a true and just account of all the debts of the testator or intestate which shall have come to his knowledge, and the amount of the assets in his hands to pay such claims. *Ib.*, sec. 146.

SEC. 172. Every petition for the sale of lands and tenements, for the payment of the debts of any testator or intestate, shall be verified by the affidavit of the executor or administrator. *Ib.*, sec. 147.

SEC. 173. On the presentation of such petition to the court, accompanied by the appraisement and list of sales of the personal property of such estate, if the court shall be satisfied that the personal estate is insufficient to pay the debts of such testator or intestate, the court shall order and direct the sale of all such lands as are set forth in such petition, or so much thereof as in the opinion of the court may be sufficient to pay the debts of the deceased (vv). *Ib.*, sec. 148.

SEC. 174. The court ordering such sale shall fix the time and place for such sale, and direct the executor or administrator to cause notice to be put up, at least twenty days before the day of sale, at ten of the most public places in the county in which the lands are situate, giving a particular description of the lands to be sold, the place and terms of sale. *Ib.*, sec. 149.

SEC. 175. The court shall specify in such order the length of credit to be given by the executor or administrator, and the kind of security to be taken (ww). *Ib.*, sec. 150.

SEC. 176. The executor or administrator making such sale shall make his return of his proceedings therein at the next term of the court after such sale, together with an affidavit that he was not the purchaser of such lands or tenements, or any part thereof, and that they were not purchased for his use, and that he is not in any manner interested in the purchase thereof (xx). *Ib.*, sec. 151.

SEC. 177. Such executor or administrator shall execute, acknowledge and deliver to the purchaser a deed for the land so sold, reciting in such deed the proceedings aforesaid, and conveying to such purchaser all the right, title and estate which the testator or intestate had in and to such lands and tenements at the time of his death. *Ib.*, sec. 152.

SEC. 178. The purchaser of such lands and tenements shall, by virtue of such deed, possess all the right, title and estate that was in the deceased at the

(**) The application must be made to the court for the county "in which the personal representative was qualified." See SEC. 4998; *Gordon v. Howell*, 35—381.

The proceeding described in this section applies to sales for the payment of purchase money as well as for the payment of debts generally. *Montgomery v. Johnson*, 31—74.

The charge upon the real estate of a decedent for the payment of his debts is not perpetual. Application to sell lands must be made in a reasonable time, to be determined by the court under the circumstances of the case. A delay of ten years after the grant of administration, without showing any hindrance or proper cause for it, is unreasonable, and discharges the lien upon the real estate. *Mays v. Rogers*, 37—155.

An heir or devisee takes the estate subject to the debts of the deceased, and can transfer to another no greater right than he himself possesses. *Howell v. Duke*, 40—102; *Hall v. Brewer*, *Ib.*, 433.

(vv) It is error to order more lands sold than is prayed for in the petition. *Mays v. Rogers*, 37—155.

(ww) The credit in probate sales of land for the payment of debts is not limited to six months, as in other judicial sales, but is left to the sound discretion of the court. *Grider v. Apperson*, 38—388.

(xx) An executor or administrator can not purchase any portion of the estate, as in equity he is held to be a trustee for the heirs, legatees and creditors. *Wright v. Campbell & Strong*, 27—637.

It is a fraud for an administrator to be interested in a purchase at his own sale, and equity will set aside the sale. *Mock v. Pleasants*, 34—63.

An attorney of an administrator, who prepares and files the petition and obtains an order for the sale of property of the deceased, is not allowed to purchase at the sale. *West v. Waddill*, 33—575.

A probate judge should not be allowed to purchase lands at a sale ordered by himself. And a purchaser of his bid, with knowledge that he was judge and that he made the order of sale, and purchased for his own benefit, is not an innocent purchaser. *Livingston v. Cochran*, 33—294.

time of his death, and shall hold such lands and tenements free from the debts of the testator or intestate (yy). *Ib.*, sec. 153.

SEC. 179. No order for the sale of lands and tenements for the payment of debts shall be made by the court, unless it shall appear to the satisfaction of the court that notice of the intended application for the sale of such lands and tenements has been given, at least four weeks before making such application, in some newspaper printed in the county where the lands lie, if there be any printed in such county, and, if none, by advertisements set up in at least six of the most public places in such county (zz). *Ib.*, sec. 154.

SEC. 180. Before any executor or administrator shall sell any lands and tenements, or any interest therein, by order of the court, he shall have such lands and tenements appraised by three disinterested householders of the county in which the lands and tenements are situated (aaa). *Ib.*, sec. 156.

SEC. 181. The said appraisers shall, before they enter on their duties, make and subscribe an affidavit that they will well and truly, according to the best of their abilities, view and appraise the lands and tenements which may be shown to them. *Ib.*, sec. 157.

SEC. 182. After such appraisers shall have made their appraisal of such lands and tenements, they shall make out a statement, under their hands, and deliver the same to the executor or administrator, who shall file it in the office of the clerk of the court. *Ib.*, sec. 158.

SEC. 183. It shall be the duty of the executor or administrator, if the lands and tenements ordered to be sold as aforesaid do not sell for two-thirds of the appraised value thereof, to reserve the same from sale. *Ib.*, sec. 159.

SEC. 184. If from any cause the executor or administrator should fail to sell any lands and tenements ordered to be sold by the court at the time specified in such order, he shall report the facts to the court, accompanied by his affidavit of the truth thereof, and it shall then be the duty of the court to make an order that the same shall be offered for sale at the end of twelve months thereafter to the highest bidder, and it shall be the duty of the executor or administrator to carry such order into full force and effect. *Ib.*, sec. 160, and *Act Dec. 23, 1846*.

SEC. 185. If any person die, having purchased lands and tenements in his life-time and not having completed the payment, nor devised such lands and tenements, nor provided for the payment thereof by will, and the completion of such payment would be beneficial to the estate and not injurious to creditors, the executor or administrator may, by order of the court, complete such payment out of the assets in his hands, and such lands and tenements shall be disposed of as other real estate; but if the court should be of opinion that, after the payment of the debts, there will not be sufficient assets to pay for such lands and tenements, the court may order the executor or administra-

(yy) See SECS. 668-669.

(zz) It is erroneous for the probate court to make an order for the sale of lands to pay debts, on the application of an administrator, without the notice required by the statute; but such order is not void for want of such notice, the proceeding being *in rem*, and the court having jurisdiction of the subject matter. *Rogers v. Wilson*, 13-507. The sale of real estate under an order made without notice, and otherwise irregular and grossly defective, is not a nullity, and will upon its confirmation divest the title of the heirs. *Montgomery v. Johnson*, 31-74.

(aaa) The failure of an administrator to have land appraised before selling it will not render the sale void if it be confirmed by the court. *Bell v. Green*, 38-78. A sale not confirmed is void, and confers no title on the purchaser. *Ib.*

for to sell at public sale all the right, title, interest or claim of the testator or intestate in and to such lands and tenements. *Rev. Stat., chap. 4, sec. 161.*

SEC. 186. If any person die, having mortgaged any lands and tenements, or pledged any personal property, or owning any equity of redemption, and shall not have devised the same or provided for the redemption thereof by will, the court, on the application of any person interested, may order the executor or administrator to redeem such estate out of the assets in his hands, if it would be beneficial to the estate and not injurious to the creditors; but if such redemption would be injurious to the estate or the creditors, or there should not be assets to redeem such estate after the payment of debts, the court may order all the right, title and interest of the estate of the deceased to such property to be sold at public auction. *Ib., sec. 162.*

SEC. 187. In all cases of the sales of the interest of the testator or intestate under the provisions of the two preceding sections, the executor or administrator shall be competent, by deed, to convey to the purchaser all the right, title and interest the testator or intestate had in and to such estate at the time of his death. *Ib., sec. 163.*

SALE ON PETITION OF CREDITOR.

SEC. 188. Any creditor of the estate of a deceased person who shall have a claim against said estate duly probated may present his petition to the probate court for an order to sell the lands of such estate or a sufficient amount thereof to pay the demands against said estate upon the conditions hereinafter stated.

SEC. 189. Said creditor shall demand in writing of the personal representative of said deceased sixty days before the next term of the probate court to present his petition in the manner now prescribed by law, or that may hereafter be prescribed, praying for an order to sell the lands belonging to his intestate, or a sufficient amount thereof to pay the demands probated against said estate; and if said personal representative shall fail or refuse to file his petition with the clerk of the probate court and give notice in the manner prescribed by law within twenty days after said demand, then, in that event, any creditor may apply by petition for an order to sell the lands of said deceased or a sufficient amount to pay the debts probated against said estate, setting forth in said petition the fact of demand and the failure of said representative to comply therewith.

SEC. 190. The probate court, if the facts will warrant, shall make an order in compliance with said petition and the law of administrations, ordering the administrator of the estate against which said petition is presented to sell the lands, in the order described, in the manner provided by law and pay the debts of his intestate out of the proceeds. *Provided*, no such order shall be made if there is sufficient personal assets in the administrator's hands to pay debts with (bbb).

SEC. 191. The probate court shall have power to compel the administrator to comply with the order made as herein provided by attachment or mandamus.

SEC. 192. Any creditor that shall present his petition under the provisions of this act to the probate court for an order to sell lands of a deceased person

(bbb) See *Grider v. Apperson*, 38—388.

to pay debts, shall give notice as now prescribed by law for an administrator, and recite therein the fact of the failure of the personal representative of said estate to apply for an order to sell after a legal demand had been made on him to do so. *Act of Feb. 15, 1877.*

SPECIFIC PERFORMANCE.

SEC. 193. When any testator or intestate shall have entered into any contract for the conveyance of lands and tenements which was not executed and performed during his life, and shall not have given power by will to carry the same into execution, the party wishing a specific performance of such contract may file his petition against the executor or administrator (*) in the office of the clerk of the circuit court of the county in which the lands are situate, setting forth the facts on which he relies for such specific performance, and proceedings shall be had thereon as in other cases in chancery requiring the specific performance of contracts. *Rev. Stat., chap. 4, sec. 167.*

SEC. 194. If it should appear to the court that a specific execution of such contract ought to be made, such decree shall be made by the court as may appear just and proper, and upon such terms as the nature of the case may require, saving to infants, married women, persons of unsound mind and persons absent from the United States the term of five years after their respective disabilities are removed to appear and file their petition to set aside such decree for fraud and collusion, and on which petition the same proceedings shall be had as in like cases in courts of chancery. *Ib., sec. 168.*

SEC. 195. When the circuit court shall decree a specific performance or execution of any contract for the conveyance of lands and tenements, the executor or administrator shall make, execute, acknowledge and deliver to the petitioner a deed in pursuance of such decree, which deed shall be as effectual in law and equity as if it had been executed by the testator or intestate in his life-time; and the court shall have power to enforce any such decree by attachment. *Ib., sec. 169.*

SEC. 196. Any moneys coming to the possession of any executor or administrator by virtue of such decree shall be accounted for as other moneys of the testator or intestate. *Ib., sec. 170.*

SEC. 197. When any testator or intestate shall have entered into any contract for the conveyance of lands and tenements in his life-time which was not executed and performed during his life, and shall not have given power by will to carry the same into execution, it shall be lawful for the executor or administrator of such testator or intestate, with the approval of the court, in term time, to execute a deed of conveyance of and for such lands pursuant to the terms of the original contract, such executor or administrator being satisfied that payment has been made therefor according to the contract, and reciting the fact of such payment to the testator or intestate, or to such executor or administrator as the case may be, which deed may be acknowledged and recorded as other deeds, and shall have the same force and effect to pass the title of such testator or intestate to any such lands as if made pursuant to a decree of court. *Act. Feb. 21, 1859, sec. 1.*

(*) For proper parties to actions generally, see SECS. 4933-4944.

SEC. 198. The provisions of this act shall apply to all cases where sales of lands shall have been made by an executor or by an administrator pursuant to an order of the court, and the duty shall or may devolve upon an administrator with the will annexed, or an administrator *de bonis non*, to complete such sale by executing the proper deed of conveyance. *Ib.*, sec 2.

SUITS AGAINST EXECUTORS AND ADMINISTRATORS.

SEC. 199. The bond of any executor or administrator may be sued on at the instance of any legatee, distributee, creditor or other person interested, in the name of the state, to the use of such legatee, distributee, creditor or other person interested, for any mismanagement, waste or other breach of the condition of such bond; and the party to whose use suit is brought shall have judgment against the executor or administrator, and his securities, for the whole value of the estate mismanaged or wasted, with costs of suit; and the amount so recovered shall be distributed by the court in the same manner as if the same had been accounted for by the executor or administrator. *Rev. Stat.*, chap. 4, sec. 171.

SEC. 200. No executor or administrator, or the security of any executor or administrator, shall be made liable for more than the amount of assets of the testator or intestate on account of having failed to plead or make defense, or on account of any omission or mistake in pleading, or false pleading of any such executor or administrator. *Ib.*, sec. 172.

SEC. 201. All judgments which shall be of the goods and chattels of the deceased shall only render the executor or administrator liable for the amount of assets in his hands unadministered (ccc). *Ib.*, sec. 173.

SEC. 202. Persons sued as executors or administrators shall not be made personally liable in any action, nor shall persons sued as executors of their own wrong be made liable to a greater extent than they otherwise would be by reason of any such person having pleaded any false plea (ddd). *Rev. Stat.*, chap. 116, sec. 70.

ATTORNEYS OF EXECUTORS AND ADMINISTRATORS.

SEC. 203. When it shall become necessary, in the opinion of the court, for any executor or administrator to employ an attorney to prosecute any suit brought by or against such executor or administrator, the attorney so employed shall receive, as a compensation for his services, eight per centum on all sums less than three hundred dollars, and on all sums over three hundred and less than eight hundred dollars, four per centum, and on all sums over eight hundred, two and a half per centum. *Rev. Stat.*, chap. 4, sec. 174.

SEC. 204. The same compensation may be allowed for defending suits when, in the opinion of the court, the employment of an attorney may be indispensably necessary to do justice to the estate. *Ib.*, sec. 175.

SEC. 205. Such attorney's fees shall be paid as expenses of administration;

(ccc) See *Tucker v. West*, 31—647.

(ddd) Under our administration system an executor *de son tort*, as at common law, is unknown. *Rust, ex. v. Witherington*, 17—129. See, also, *Barasieu v. Odum*, *Ib.*, 122.

but no attorney's fee shall be allowed any executor or administrator unless for the prosecuting or defending a suit under the direction of the court (eee). *Ib.*, sec. 176.

FINAL SETTLEMENT.

SEC. 206. Each executor or administrator shall make final settlement of his administration within three years from the date of his letters testamentary or of administration. *Ib.*, sec. 185.

REMOVAL OF ADMINISTRATIONS FROM ONE COUNTY TO ANOTHER.

SEC. 207. Where any person has taken out letters of administration on any estate in any county in this state, such administration may be removed to any other county in the manner and for the causes hereinafter set forth.

SEC. 208. The administrator, or a majority of the heirs of the estate, shall petition the court for the removal of such administration, and show that the greater portion of the property belonging to said estate is in the county to which such petition prays to remove such administration, or that the larger portion of the heirs or legatees of such estate live in the county to which it is sought to remove such administration, and that such heirs or legatees wish such removal.

SEC. 209. Every petition for the removal of any administration shall be verified by the oath of the administrator, or one of the heirs or legatees.

SEC. 210. If, on the receipt of the petition, the court shall be of opinion that the interest of the estate will be advanced by such removal, such court may make an order directing the change prayed for.

SEC. 211. No change of any administration shall be ordered by the court upon the petition of the administrator until such administrator shall have settled such estate as far as by law he should have settled the same at the time of his application.

SEC. 212. Where a majority of the heirs petition for the removal of an administration, and the court shall deem that the interest of the estate will be advanced by such removal, in addition to the order of removal, the court shall make a further order that the administrator shall settle the same with the court granting the removal by the next term thereafter, as far as by law he can settle the same, and in all things comply with the provisions of this act, touching the requisites of the removal thereof, as if the same were upon his own petition.

SEC. 213. When all the requisitions of this act shall have been complied with, the clerk shall make out a complete transcript of such administration and transmit the same to the clerk of the county to which the said administration is ordered to be removed.

(eee) Where a portion of the heirs and distributees employ an attorney to contest the settlement of the executor, the probate court has no power to direct the payment of the attorney's fee by the executor out of the residuary fund of the estate; if it be a proper case for contribution by all interested in the estate, the remedy is in chancery only. *McParton, ex., v. Dickson et al.*, 15—97. Where there is no order of the probate court authorizing an administrator to employ an attorney, it is in the discretion of the court to allow him credit for fees paid to an attorney, and its order is conclusive where no abuse is shown. *Reynolds v. C. & B. Co.*, 30—520; *Turner v. Tapcott, Ib.*, 312. For construction of these sections, see *Bill & Carlton v. Welch*, 38—139.

SEC. 214. When any such transcript shall be filed, the court shall proceed thereon to final settlement, in the same manner as if such administration had been originally commenced in such court.

SEC. 215. The provisions of this act shall extend to the execution of last wills and testaments, and to letters of administration with the will annexed; and the same may be removed in like manner as in cases of administration on the estates of intestates.

SEC. 216. No clerk shall make out a transcript of any administration until the administrator shall file in his office the official certificate of the clerk of the county to which such administration is ordered to be removed that such administrator has there filed bond and security in double the amount of said estate. *Rev. Stat., chap. 5.*

ADMINISTRATION ON PRESUMPTION OF DEATH (ff).

SEC. 217. An estate recovered in any case in which the death of the person having right thereto shall have been presumed shall be restored to such person on making his personal appearance, or on making satisfactory proof of his being in full life, and he may recover the rents and profits of the estate during the time he may have been deprived thereof, with interest. *Rev. Stat., chap. 46, sec. 2.*

CERTAIN PROCEEDINGS HAD IN MATTERS OF ADMINISTRATION DECLARED VALID.

SEC. 218. All the official acts of the clerks of the probate courts done and performed between the sixth day of May, eighteen hundred and sixty-one, and the first day of June, eighteen hundred and sixty-five, in relation to the administration and settlement of the estates of deceased persons, and in the appointment of guardians and the settlement of their accounts, and also all the acts of executors, administrators and guardians done and performed, and all the orders, judgments and decrees of the probate courts, made and entered between the dates aforesaid, touching the estates of deceased persons and matters of guardianship as aforesaid, when the same have been done in accordance with the laws of the state then in force, be and the same are hereby confirmed and made valid. *Act April 5, 1873.*

SEC. 219. All letters testamentary, and all letters of administration, issued in substantial compliance with the "Chapters of the Digest," approved by the general assembly of the State of Arkansas, at the session begun and held at Little Rock on the seventeenth day of December, A. D. 1868, shall be in all respects valid, and have the same force and give the same power as though issued in compliance with law; and all legal acts done shall have complete and entire effect.

SEC. 220. Administrators of partnership effects shall close up said partnership business as surviving partners, but their acts as administrators heretofore performed, when legal, shall be valid and binding.

SEC. 221. Any administrator or executor who shall have made and filed any inventory or appraisement, or made any settlements with the court, or done any other act in substantial compliance with said chapters, shall not be subject to any penalty, forfeiture or liability by reason of it not being done in con-

(ff) See SEC. 2850.

formity with law; and if said inventories, appraisements, settlements or other acts would have been legal had they conformed to Gould's Digest, they shall be and are hereby made in all respects valid and binding.

SEC. 222. All sales of real or personal estate, and deeds executed in pursuance of said sales, by any executor or administrator, in substantial compliance with said chapters, shall be in all respects as valid and binding as they would have been if made in strict conformity with law.

SEC. 223. All allowances heretofore made, in substantial compliance with said chapters, shall be in all respects good, valid and binding, provided, upon the motion of any party interested, upon notice to the administrator or executor, the probate court shall proceed to reclass allowances heretofore made, under said chapters, in conformity with Gould's Digest. No allowance shall be placed in an inferior class without notice to the claimant or his attorney. *Act Feb. 25, 1873.*

CHAPTER II.

ADMINISTRATORS, PUBLIC.

SECTION

- 224. Sheriff, such *ex officio*.
- 225. Duties.
- 226. Bond.
- 227. Inventory; account.
- 228. When to account.

SECTION

- 229. Who to give information to public administrator.
- 230. What suits to institute.
- 231. Sheriff and his sureties responsible on bond for misconduct.

SECTION 224. The sheriff shall, by virtue of his office, be public administrator in and for his county.

SEC. 225. It shall be the duty of each public administrator to take into his charge all the estate, of every kind, of deceased persons in his county in the following cases:

First. Where a stranger dies intestate in his county without relations, or dies leaving a will, and the executor named is absent or fails to qualify and enter into bond as required by law.

Second. Where persons die intestate without any known heirs and administration is not taken by some responsible person.

Third. Where persons unknown are found dead or die in his county.

Fourth. Where money, property, papers or other estate is exposed to loss and damage and no other person administers on the same.

Fifth. Where the estate of any person who may have died elsewhere is left in his county, liable to be wasted, injured or lost, or is not in the lawful custody of some responsible person.

Sixth. In all other cases where the court of probate shall order him to take possession of any estate to prevent it from being injured, wasted or purloined (a). *Rev. Stat., chap. 120, secs. 1 and 2.*

(a) Until the sheriff assumes the duty of administering or is directed by the court to do so, he does not become the administrator of a particular estate, and can not be required to allow or reject a claim against it. *Williamson v. Furbush, 81—539.*

SEC. 226. When any property of any deceased person shall come into the hands of any public administrator, he shall enter into the like bond and security as is now or may hereafter be prescribed in cases of administrators in ordinary cases (b). *Act Dec. 18, 1840, sec. 2.*

SEC. 227. It shall be the duty of each public administrator to make a true and perfect inventory of all estates taken into his possession, and administer and account for the same as near as circumstances will permit, according to the law prescribing the duties of administrators, subject to the control and direction of the court of probate. *Rev. Stat., chap. 120, sec. 3.*

SEC. 228. If, at any time, letters testamentary or of administration be regularly granted on any estate in the hands and under the control of the public administrator, he shall, under the order of the court of probate, account for, pay and deliver to the executor or administrator thus appointed all the money, property and estate of every kind in his possession. *Ib., sec. 4.*

SEC. 229. It shall be the duty of all justices of the peace and constables in their respective counties to inform the public administrator of all property and estates known to them which are liable to waste or injury, and which by law ought to be in the possession of the public administrator. *Ib., sec. 5.*

SEC. 230. The public administrator shall institute all manner of suits that may be necessary to recover the property, debts, papers or other estate of the deceased, in the same manner as if letters of administration were actually granted to him, styling himself, in all such suits, the public administrator of the proper county. *Ib., sec. 6.*

SEC. 231. Every sheriff and his securities shall be responsible on his official bond for misconduct in discharging his duties of public administrator. *Ib., sec. 7.*

CHAPTER III.

ALIENS (a).

SECTION

232. Legal distinctions between citizens and resident aliens in regard to property prohibited.

233. Aliens may hold and inherit real estate as if they were citizens.

SECTION

234. Their personal property distributed as if they were citizens.

SECTION 232. No distinction shall ever be made by law between resident aliens and citizens in regard to the possession, enjoyment or descent of property. *Art. II, sec. 20, Const.*

A public administrator has no more or greater power, authority or rights than other administrators. *State, use, etc., v. Rottaken, 34—144.*

That there is no administrator upon an estate, and the sheriff refuses to administer, and the creditor is a non-resident and can not administer, afford no grounds for chancery to assume jurisdiction to administer the estate. The probate court has exclusive original jurisdiction, and the sheriff may be compelled to administer. *Flash, Lewis & Co. v. Greham, 36—529.*

(b) This section does not repeal section 231, and under that section the sheriff and his sureties on his official bond are liable for his misconduct in discharging the duties of public administrator. *State, use, Higginbotham's adm. v. Watts et. al., 23—304.*

(a) See art. VI, Const. U. S., note (mm).

SEC. 233. All aliens shall be capable of taking by deed or will lands and tenements in fee simple, or other less estate, and of holding, aliening and devising the same; and upon the decease of any alien having title by purchase or descent, according to this act, to any lands or tenements, such lands and tenements shall descend and pass as if such alien were a citizen of the United States; and it shall be no objection to the husband, widow or kindred of such alien, or any citizen deceased, taking lands and tenements by virtue of the laws of this state regulating the distribution of estates of intestates that they are aliens (b). *Act December 15, 1874.*

SEC. 234. The personal property of an alien dying intestate, who at the time of his death resided in this state, shall be distributed in the same manner as if he were a citizen, and it shall be no objection to the husband or widow of any alien or other intestate taking distributive shares of the deceased's personal estate that they are aliens. *Rev. Stat., chap. 7.*

CHAPTER IV.

APPRENTICES (a).

SECTION

- 235. Exclusive original jurisdiction in county courts.
- 236. Duty of court; when guardians to be directed to bind their wards; covenant of master.
- 237. Indenture to be approved by court and recorded.
- 238. Minors with parents living, when to be bound; indenture in such case, how made.
- 239. Father or mother may bind, when and how.
- 240. What covenants indenture shall contain when parents bind.

SECTION

- 241. Indentures by parents not obligatory until approved and recorded.
- 242. Complaints of apprentices against masters, grounds of.
- 243. Complaint of apprentice, how to be heard and order thereon.
- 244. Complaints of masters against apprentices, grounds of; proceeding thereon.

SECTION 235. The county court shall have exclusive original jurisdiction in all matters relating to the apprenticeship of minors. *Act Feb. 5, 1875; art. VII, sec. 28, Const. (*)*.

SEC. 236. It shall be the duty of said court to inquire into the situation of every orphan and such minors as have not sufficient estate for their maintenance, and in cases of minors or orphans having no estate for their maintenance and education, the court shall direct guardians to bind their wards apprentices until the age of twenty-one years, if males; if females, until the age of eighteen years, to some master or mistress to be chosen by the ward, if over ten years of age, who shall covenant to teach the apprentice some useful art, trade or business, to be particularized in the covenant; and shall be further bound

(b) Under this statute aliens may take and transmit land by inheritance or otherwise, and they could at common law take by devise. *Jones v. Minogue*, 29—637. The state courts have concurrent jurisdiction with the federal courts over controversies between citizens and aliens. *Ib.*

(a) The contract of an infant in binding himself an apprentice, being an act manifestly for his benefit, is binding in law, and when bound he can not dissolve the relation. If such contract is binding, a right of action necessarily results to the injured party for a breach thereof. *Woodruff v. Logan*, 6—276.

(c) See SEC. 1407.

therein to teach said apprentice reading, writing and arithmetic, to the rule of three inclusive. *Rev. Stat., chap. 8, sec. 2; act Dec. 28, 1840.*

SEC. 237. The indenture shall be approved of by the court, and recorded by the recorder of the county. *Rev. Stat., chap. 8, sec. 3.*

SEC. 238. In case of minors whose parents, or either of them, are living, but have not the means of maintaining their children, or willfully neglect to support and educate their children, the court shall bind said children, as in case of orphans, and in such cases the indenture shall be made by the judge of the county court (*). *Ib., sec. 4.*

SEC. 239. The father of any minor, or, the father being dead, the mother, when the probate court has not appointed a guardian, may bind their children, being minors, in like manner as guardians, for the purpose of learning some useful art, trade or employment (b). *Ib., sec. 5.*

SEC. 240. In all such covenants, by parents binding their children, the indenture shall contain the covenant requiring the minors to be sent to school at least one-fourth of their time, after they are seven years of age. *Ib., sec. 6.*

SEC. 241. Such indentures by parents shall not be obligatory until the same shall be approved by the county court and recorded in the office of the recorder of the county (c). *Ib., sec. 7.*

SEC. 242. The county court shall, at all times, receive the complaints of apprentices who reside within their respective counties against their master or mistress, whether made in person, or by any other person for them, alleging undeserved or immoderate correction, insufficient allowance or quality or quantity of food, raiment or lodging, or want of proper instruction. *Ib., sec. 8.*

SEC. 243. The court shall hear and determine all such cases in a summary manner, without the intervention of formal pleadings, and make such order therein as, in their judgment, will relieve the party injured in future, or remove the apprentices and bind them with other masters when it shall be deemed necessary. *Ib., sec. 9.*

SEC. 244. It shall, in like manner, be the duty of the court to receive and hear complaints of masters against their apprentices for desertion without good cause, and may oblige the apprentice, for loss occasioned by an improper desertion, to make compensation by further services after the expiration of his apprenticeship. *Ib., sec. 10.*

(*) See *Bowles v. Dixon*, 32—96.

This section and the section taken from the act of December 28, 1840, are inserted as modified by the present constitution and the act of February 5, 1875.

(b) The father can not bind without written consent of mother. SEC. 4629.

(c) See *Morrill v. Kenedy*, 22—324.

CHAPTER V.

ARBITRATION AND AWARDS (a).

SECTION

- 245. How proceedings shall be.
- 246. What controversies may be submitted.
- 247. To be made by rule of court or consent.
- 248. Matter submitted to be stated, when.
- 249. Court shall state time in which the award is to be made and returned.
- 250. Oath of arbitrators, their power, etc.
- 251. Witnesses before, how summoned.
- 252. Failure of, to attend or testify, how punished.

SECTION

- 253. Personal representatives may make submission, how.
- 254. When court may set aside order of reference.
- 255. Time and place of meeting and making award.
- 256. When award made, judgment of the court.
- 257. Informality no cause to set aside.
- 258. Proceedings in, before justice's court.
- 259. Appeal from justice's judgment allowed.

SECTION 245. The proceedings upon arbitrations and awards, made under an order or rule of court, or by consent of parties, in vacation, shall be as herein prescribed.

SEC. 246. All controversies which might be the subject of a suit or action may be submitted to the decision of one or more arbitrators, or to two and their umpire, in the manner provided in this chapter.

SEC. 247. Parties may make such submission by rule of any court having jurisdiction of the subject matter, or by consent, in vacation.

SEC. 248. The parties making such submission shall, where there is no suit or action pending, by written agreement filed and noted on the record, or by an entry on the record, state what matter is submitted.

SEC. 249. The rule of the court shall state the time in which the award is to be made and returned; but the court may enlarge the time for making and returning an award.

SEC. 250. Arbitrators and the umpire, if there be one, before they proceed to act, shall take an oath to decide the controversy, to them submitted, according to law and evidence and the equity of the case, to the best of their judgment, without favor or affection; and a certificate of such oath shall be returned to the court with the award. They shall have power to examine either party, on oath, at the request of his adversary (b).

SEC. 251. Any one of the arbitrators shall have power to issue subpoenas for witnesses to attend their sitting and give evidence touching the matters referred to them, to which all sheriffs, and other like officers, shall give obedience.

SEC. 252. Witnesses failing to attend before arbitrators at the time and place designated, or who shall refuse to give evidence when they do attend, shall be reported to the court by the arbitrators, and proceeded against and punished as if the case had been pending in court.

(a) The provisions of this chapter do not repeal the common law on the same subject, nor are parties thereby prohibited from submitting controversies to arbitration without the intervention of a court. *Wilkes v. Cotter*, 28—519.

(b) An award will not be good as a statutory award, unless the proceedings of the arbitrators as to the oath taken by them and other duties have been substantially, if not strictly, in pursuance of the statute. But an arbitration and award as at common law are still good and enforceable, notwithstanding the statute. *Collins v. Karatopsky*, 36—316. See also *Harris v. Hanie*, 37—348.

SEC. 253. The personal representatives of a decedent, guardian of an infant, idiot or lunatic, or any trustee, may make a submission, as herein provided for, touching the estate of such decedent, infant or insane person, or in respect to which he is trustee. Any such submission, so made in good faith, and the award made thereon, shall be binding, and entered as the judgment or decree of the court. No such fiduciary shall be responsible for any loss sustained by an award adverse to the interest he represents, unless the same be caused by his fault or neglect.

SEC. 254. If any arbitrator shall fail or refuse to act, the court may set aside the order of reference.

SEC. 255. The arbitrators and umpire, if there be one, shall meet at such convenient times and places as may be necessary, of which the parties shall have reasonable notice, and hear such evidence as either party may adduce. They shall have power to administer oaths. They shall make their award in writing, stating therein the time when it is made, and sign the same. When the award is made out, one copy thereof shall be delivered to each of the contending parties and the original returned to the court, on which the arbitrators shall note the time of delivering a copy to each party.

SEC. 256. If such award is made out and returned, and copies delivered ten days before the term of the court next succeeding such delivery, the same shall be entered of record and made the judgment or decree of the court, unless, on exceptions filed, the award shall be set aside.

SEC. 257. No award shall be set aside for the want of form. But courts shall have power over awards on equitable principles as heretofore.

SEC. 258. Matters within the jurisdiction of a justice of the peace may be submitted to arbitrators by an order, rule or agreement entered on his record book in the same manner, and the proceedings under it shall be the same in every respect as are authorized and required in other courts.

SEC. 259. Either party may appeal to the circuit court from the judgment of the justice on the award, as in other cases. *Civil Code, sec. 494.*

CHAPTER VI.

ARREST—PRIVILEGE FROM.

SECTION

260. Members and officers of legislature privileged from, and for what time.

261. Proceedings stayed during time of privilege.

262. Punishment of persons invading privilege.

263. Voters privileged, and for what time.

SECTION

264. Those doing militia duty, and for what time.

265. No person to be arrested in senate chamber, representative hall, or court of justice.

266. Not to extend to cases of treason, felony, etc.

267. Discharged on *habeas corpus*.

SECTION 260. The members of the senate and house of representatives and the clerks, sergeant-at-arms and doorkeepers of each branch of the general assembly shall be privileged from arrest during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session (a).

SEC. 261. All proceedings in suits pending in any of the courts of this state, in which any of the persons named in the preceding section are parties, shall be stayed during the time aforesaid.

SEC. 262. If any person shall arrest either of the persons before named during the time they are privileged therefrom, such person shall forfeit and pay the sum of one hundred dollars, with costs, to be recovered by action in the name and for the use of the injured party.

SEC. 263. All persons qualified to vote for representatives in the general assembly shall be privileged from arrest during their attendance at any election and while on their way going to and returning from such election.

SEC. 264. No person shall be arrested while doing militia duty, under the order of his commanding officer, or while going to or returning from the place of duty or parade (b).

SEC. 265. No person shall be arrested in the senate chamber or house of representatives during their sitting, or in any court of justice during the sitting of the court.

SEC. 266. Nothing contained in the provisions of this act shall be so construed as to extend to cases of treason, felony or breach of the peace, or to privilege any person named from being served at any time or place herein specified with a summons or notice to appear (c).

SEC. 267. If any person shall be arrested contrary to the provisions of this act, such person shall be discharged on a writ of *habeas corpus* by any court or officer having authority to issue such writ, at the costs of the party procuring the arrest. *Rev. Stat., chap. 10.*

(a) See art. V, sec. 15, *Const.*

(b) See art. XI, sec. 3, *Const.*

(c) As to privilege of witnesses, see SEC. 2881.

CHAPTER VII.

ARREST AND BAIL—CIVIL.

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WHEN AND HOW AN ORDER OF ARREST MAY BE OBTAINED.

SECTION 268. A defendant in a civil action can be arrested and held to bail only upon the conditions and in the manner prescribed in this chapter (a). *Civil Code, sec. 173.*

SEC. 269. An order for the arrest of the defendant shall be made by the clerk of the court in which the action is brought at its commencement or at any time before judgment, when there is filed in his office an affidavit of the plaintiff, showing in all cases of arrest on civil process:

First. The nature of the plaintiff's claim or debt, and charging the defendant with fraud in contracting the same.

Second. That it is just.

Third. The amount or value which the affiant believes the plaintiff ought to recover.

Fourth. That the affiant believes either that the defendant is about to depart from this state, and, with the intent to defraud his creditors, has concealed or removed from this state his property, or so much thereof that the process of the court, after judgment, can not be executed, or that the defendant has money, or securities for money, or evidence of debt, in the possession of himself, or of others for his use, and is about to depart from this state without leaving property therein sufficient to satisfy the plaintiff's claim. *Civil Code, sec. 174, as amended 1871.*

(a) See art. II, sec. 16, Const.

SEC. 270. The order of arrest shall not be issued by the clerk until there has been executed in his office, by one or more sufficient sureties of the plaintiff, a bond to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the arrest, if the order is wrongfully obtained.

SEC. 271. The order of arrest shall be addressed and delivered, with a copy thereof, to the sheriff. It shall state the names of the parties to the action, the court in which the action is brought, and the amount of the plaintiff's claim specified in the affidavit, and shall require the sheriff to arrest the defendant and hold him to bail in the sum of the plaintiff's claim, with the probable costs of the action, not exceeding twenty-five dollars, and to make return of the order on a day to be named therein, with the bail bond, if any is taken.

SEC. 272. The return day of the order of arrest, when issued at the commencement of an action, shall be the same as that of the summons; when issued afterward, it may be another day in term, at the option of the plaintiff.

ORDER OF ARREST, PROCEEDINGS ON.

SEC. 273. The sheriff shall execute the order of arrest by arresting the defendant and delivering to him a copy thereof.

SEC. 274. The defendant, when arrested, shall be committed by the sheriff to the jail of his county, a copy of the order of arrest being delivered to the jailer, and, unless bailed, kept in custody in the manner provided by law in the case of a defendant taken in execution upon a judgment in a civil action, until discharged in the mode and upon the conditions herein prescribed for discharging a defendant taken in execution on judgment.

SEC. 275. The defendant may, before or after giving bail, deposit in the hands of the sheriff or in court, the amount of money mentioned in the order of arrest, whereupon he shall be discharged, or his bail, if any is given, shall be released.

SEC. 276. The sheriff shall pay into the court the money received by him in vacation, in lieu of bail, on the first day of the next term. Where it is received during the term, he shall pay it into the court immediately.

SEC. 277. The court shall make proper orders for the safe-keeping of money deposited in lieu of bail. It may direct the sheriff to keep the moneys, and, after final judgment in the action, shall order it to be paid to the party entitled thereto according to the result.

SEC. 278. Money deposited in the hands of the sheriff in lieu of bail, or directed by the court to be kept by him, shall be held upon his official responsibility, and he and his sureties shall be liable and may be proceeded against for any default in relation thereto, as in other cases of delinquency.

SEC. 279. Bail may be given by the defendant on his arrest, or at any time afterward before judgment. It shall be done by causing one or more sufficient bail to execute a bond to the plaintiff in the presence of the sheriff, or of the jailer where the defendant has been committed to jail, to the effect that, if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereupon. The bond, when accepted, shall be returned to the clerk's office and the defendant discharged.

SEC. 280. The bail must be a resident of this state and be worth double the sum specified in the order of arrest, beyond the amount of his debts, and have property in the state subject to execution at least equal in value to that sum. If two or more become bail, they must, in the aggregate, possess the same qualifications. The bail, if it is required by the sheriff, shall make affidavit to their qualifications before him.

SEC. 281. If the plaintiff objects to the bail for insufficiency, he may move his objections in court during the term at which the bail bond is returned and not afterward, except where the bond is returned within the last three days of the term, in which case the motion may be made on the first day of the succeeding term. The motion can not be made unless the plaintiff has given to the sheriff, or to the jailer where the bond was taken by him, notice thereof, and, if the notice is adjudged unreasonable, the court may continue the motion to some day in the same or the succeeding term.

SEC. 282. If the motion is not made, or the bail is not thereupon adjudged insufficient, the officer shall be exonerated from liability by reason of the insufficiency of the bail.

SEC. 283. The bail adjudged insufficient shall not be thereby released, but an order shall forthwith be made to re-arrest the defendant; and, thereupon, the same proceedings may be had, and with the like effect, as are directed upon an order of arrest.

SEC. 284. Upon judgments in actions in which the defendant has been arrested and held to bail, and in which the order of arrest has not been vacated, an execution against the body of the defendant may be issued. *Civil Code, secs. 175-189.*

SEC. 285. The defendant arrested or imprisoned, or liable to be arrested and imprisoned, on any such execution, may present his petition, in writing, to the circuit court in term time, or to the judge thereof in vacation, offering to deliver up all his property not exempt from sale on execution or other process issued for the collection of any debt. *Rev. Stat., chap. 79, sec. 2; art. IX, secs. 1, 2, 3, Const.*

SEC. 286. Every such debtor shall annex to and deliver with his petition to the court or judge a schedule, under oath, containing:

First. A full and true account of all his creditors.

Second. The place of residence of each creditor, if known to such debtor, and, if not, the fact to be stated.

Third. The sum owing to each creditor, the nature of each debt or demand, and whether arising on written security, on account, or otherwise.

Fourth. The true cause and consideration of such indebtedness, in each case, and the place where such indebtedness accrued.

Fifth. A statement of any existing judgment, mortgage, collateral or other security, for the payment of any such debt.

Sixth. A full and true inventory of all the estate, real, personal and mixed, in law and equity, of such debtor, and of all the books, vouchers and securities relating thereto.

Seventh. A full statement of the cause of the insolvency of such debtor. *Rev. Stat., chap. 79, sec. 3.*

SEC. 287. Upon the presentation of such petition and schedule, the court

or judge shall make an order that reasonable notice of such application be given the judgment creditor. *Ib.*, sec. 4.

SEC. 288. If the judgment debtor be imprisoned, or liable to be imprisoned, on said execution, such court or judge may direct him to be discharged from custody, on his entering into bond, with good and sufficient security, to be approved by the court or judge, to the plaintiff in the execution, in double the amount of the judgment, damages and costs, conditioned that he will be and appear before the court or judge at the time and place appointed for the hearing. *Ib.*, sec. 5.

SEC. 289. At the time and place appointed, the court or judge may administer the following oath: "I do swear that the account of my creditors, and the inventory of my estate, which are annexed to my petition, are, in all respects, just and true; and that I have not, at any time or in any manner whatsoever, disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have in no instance credited or acknowledged a debt for a greater sum than I honestly and truly owed, and that I have not paid, secured to be paid or compounded with any of my creditors with a view fraudulently to obtain the benefit of this act." *Ib.*, sec. 7.

SEC. 290. If the court shall be satisfied that such debtor has not concealed or conveyed to any person, for the use of himself or any of his family or friends, or whereby to expect any future benefit to himself or his family, any part of his estate, effects or credits, and he shall answer all and every question or interrogatories touching his estate and losses, or the means of his insolvency, by word or in writing, as shall be put to him by the court or any creditor, and shall deliver to the sheriff of the county a copy of his petition and schedule, and all his property in possession therein mentioned not exempt from sale on execution, together with his books, title papers, evidences of debts and contracts of every kind whatsoever, an order shall be made discharging and exempting such debtor from arrest and imprisonment on such execution. *Ib.*, sec. 8.

SEC. 291. Such order shall be a sufficient warrant to the sheriff or jailer to discharge such debtor from custody. *Ib.*, sec. 9.

SEC. 292. No such debtor shall be discharged by the court until he shall file in the court the certificate of the sheriff that he has received all the property in possession mentioned in the petition and schedule of such debtor, together with his books, title papers, evidences of debt and contracts of every kind whatsoever subject to execution. *Ib.*, sec. 10.

LIABILITY AND DISCHARGE OF BAIL AND OF OFFICERS.

SEC. 293. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery to him of a copy of the order of arrest and of the bail bond by the defendant himself, or by his bail at any time before the liability of the bail is fixed, shall discharge the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and commit the defendant to the jail of his county with his order indorsed upon the copy of the bail bond delivered to the jailer.

SEC. 294. For the purpose of surrendering the defendant the bail may at any time or place arrest him, or authorize, in writing indorsed upon a copy of the order of arrest and bail bond, the sheriff or any constable to do so.

SEC. 295. A return of "not found" upon an execution against the body of the defendant, placed in the hands of the sheriff of the county in which he was arrested within twenty days after it might have issued upon the judgment, shall be necessary to fix the liability of the bail, which shall be to pay the amount of the judgment and costs.

SEC. 296. The bail can be proceeded against in a separate action only.

SEC. 297. He will be exonerated by the death of the defendant, or his removal from this state under process of law as a fugitive, before the return day of the summons served upon the bail in the action to enforce his liability, or by the imprisonment of the defendant in the penitentiary, or his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in execution thereof, by the return day of the summons in the action against the bail, or within such further time as the court in which the action is pending may allow. If the defendant is confined in any jail of this state the bail will be exonerated by delivering to the jailer thereof, at any time before the return day of the summons in the action against the bail, a certified copy of the order of arrest and of the bail bond, with a written order thereupon to detain the defendant in custody until discharged by law from the action in which the bond was given. The jailer shall give a written acknowledgment of the receipt of the order, which shall be filed with the original bond.

SEC. 298. If after being arrested the defendant escapes, or is rescued, or bail is not taken, or is adjudged insufficient, or a deposit is not made, the sheriff shall be liable as bail unless he had committed the defendant to jail and obtained a written acknowledgment thereof from the jailer, in which case the jailer shall be so liable. Either officer may discharge himself from such liability by putting in sufficient bail at any time before judgment.

SEC. 299. The liability of the officer as bail shall be fixed in the manner provided for fixing the liability of the bail, and can be enforced only in a separate action against him, or against him and his securities in his official bond, as in other cases of delinquency.

SEC. 300. The bail adjudged insufficient shall be liable to the officer for the damages he may sustain by reason of such insufficiency. *Civil Code, secs. 190-197.*

MOTION TO VACATE AN ORDER OF ARREST.

SEC. 301. A defendant, against whom an order of arrest has been obtained, may, at any time before judgment in the action and before a decision of a motion on account of the insufficiency of the bail, apply to the court, or, in vacation, and before executing a bail bond, to the judge thereof or to a circuit judge, by motion, to vacate the order of arrest or to reduce the amount of bail. Reasonable notice of the motion shall be given to the plaintiff. If satisfied that the bail ought not to have been required, or that the sum for which it was demanded is too large, the court or judge may vacate the order of arrest or reduce the amount of bail.

SEC. 302. The decision of the motion shall be final in the action, but shall not affect the rights of the parties in any other action. *Civil Code, secs. 198, 199, as amended 1871.*

SEC. 303. Upon the vacation of the order of arrest the defendant shall be discharged, or the bail bond, if any is given, shall be canceled. If the motion is supported by affidavits or other evidence out of the record, the plaintiff may oppose it by affidavits or other evidence, in addition to that on which the order of arrest was obtained.

SEC. 304. The writ of *scire facias* against bail is abolished. *Civil Code, secs. 200, 201.*

CHAPTER VIII.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

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306. Account current of assignee, when and where to be filed.
307. Examination of account and allowances to assignee.

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308. When court may allow assignee to employ an attorney.
309. Property assigned to be sold, when and how.

SECTION 305. In all cases in which any person shall make an assignment of any property, whether real, personal, mixed or choses in action, for the payment of debts before the assignee thereof shall be entitled to take possession, sell or in any way manage or control any property so assigned, he shall be required to file in the office of the clerk of the court exercising equity jurisdiction a full and complete inventory and description of such property, and also make and execute a bond to the State of Arkansas in double the estimated value of the property in said assignment, with good and sufficient security, to be approved by the clerk of said court, conditioned that such assignee shall execute the trust confided to him, sell the property to the best advantage and pay the proceeds thereof to the creditors mentioned in said assignment according to the terms thereof, and faithfully perform the duties according to law (a). *Act Feb. 16, 1859, sec. 1, as amended by act Feb. 23, 1883.*

SEC. 306. Such assignee shall, at the first term of the court after one year from the date of said assignment, and at the corresponding term of said court every year thereafter until the proceeds of the property assigned be disposed of for the benefit of creditors, present to the court a fair written statement, or

(a) Title to the property assigned vests in the assignee upon the execution and delivery of the deed by the assignor, and can not be defeated by an execution against the assignor coming to the hands of an officer after the delivery of the deed and before the filing of the schedule and bond. *Clayton v. Johnson, 36—406.*

An assignment by an insolvent debtor of all his property for the benefit of his creditors, with a stipulation for a full release from the accepting creditors, is not fraudulent. *Ib.*

The assignee in a deed of assignment can not maintain an action against an officer for taking the assigned goods under a writ of attachment against the assignor until he has filed the inventory and given the bond required by the statute. *Falconer v. Hunt, 39—68; Thatcher v. Franklin, 37—64.*

account current, in which he shall charge himself with the whole amount of the property assigned, including all debts due or to become due, and credit himself with all sums of money expended, either by payment of debts or otherwise, exhibiting with such account the receipts and vouchers for all moneys paid out to the creditors of said assignment, which said account, so made out, shall be filed in the office of the clerk of the court and become a part of the record thereof, certified copies of which shall be competent evidence of the facts therein contained, in the same manner and to the same extent as the records of any other court. *Ib.*, sec. 2.

SEC. 307. Such account shall be carefully examined by the court, and upon such examination the court shall allow the assignee for all debts with which he stands charged which the court shall be satisfied could not be collected, and shall allow the assignee any sum not exceeding ten per centum on all sums less than one thousand dollars, and on all sums over one thousand dollars five per centum for his risk and trouble in attending to the settlement of such assignment.

SEC. 308. In case any portion of the property becomes involved in litigation in the courts, the assignee may set forth the facts in such litigation in a petition to the court, and the court may allow the assignee to employ an attorney to either prosecute or defend such suits, stipulating the amount or per centum of such attorney's fee in each particular case, taking into consideration the amount in controversy, for which fee or per centum the assignee shall be entitled to credit. *Act Feb. 23, 1883, secs. 2, 3.*

SEC. 309. Said assignee shall be required to sell all the property assigned to him for the payment of debts, at public auction, within one hundred and twenty days after the execution of the bond required by this act (b), and shall give at least thirty days' notice of the time and place of such sale; and any person damaged by the neglect, waste or improper conduct of such assignee shall be entitled to bring his action on the bond, in the name of the state, for the use and benefit of such person. *Act Feb. 16, 1859, sec. 3.*

(b) A deed which authorizes the assignee to sell at private sale is in violation of this section and void. *Raleigh v. Griffith*, 37—150.

A deed of assignment which authorizes the assignee to retail the assigned goods privately for twelve months and then to sell the remnant at public sale is void as against non-assenting creditors. The sale must be public and within one hundred and twenty days after the assignee assumes the trust. *Teah v. Roth*, 39—66.

CHAPTER IX.

ATTACHMENTS (*).

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(*) In suits by attachment the rules of proceedings in the circuit court, so far as they are applicable, govern justices' courts. See SEC. 4124. For attachment in proceedings by discovery to enforce execution, see SECS. 3064-3087. For attachment to enforce lien of landlord on crop, see SECS. 4459-4462. For attachment in action to recover purchase money, see SECS. 4399-4401. For proceedings by attachment against persons who unlawfully cut down or carry away timber, etc., see SECS. 3868-3869.

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GROUNDS OF ATTACHMENT.

SECTION 309. The plaintiff in a civil action may, at or after the commencement thereof, have an attachment against the property of the defendant, in the cases and upon the grounds hereinafter stated, as a security for the satisfaction of such judgment as may be recovered (a):

First. In an action for the recovery of money (*), where the action is against—

1. A defendant or several defendants who, or some one of whom, is a foreign corporation or non-resident of the state (**); or,
2. Who has been absent therefrom four months; or,
3. Has departed from this state with intent to defraud his creditors; or,
4. Has left the county of his residence to avoid the service of a summons (b); or,
5. So conceals himself that a summons can not be served upon him; or,
6. Is about to remove, or has removed, his property, or a material part thereof, out of this state, not leaving enough therein to satisfy the plaintiff's claim or the claim of said defendant's creditors (c); or,
7. Has sold, conveyed or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder or delay his creditors (d); or,
8. Is about to sell, convey or otherwise dispose of his property with such intent. But an attachment shall not be granted on the ground that the defendant or defendants, or any of them, is a foreign corporation or non-resident of this state for any claim other than a debt or demand arising upon contract.

9. The cause of attachment mentioned in the preceding subdivisions against one or more defendants to a civil action shall not authorize an attachment against any of the defendants who are not embraced in any of said subdivisions, but the estate or interest of such defendants only as are embraced therein shall be subject to attachment.

Second. In an action to recover possession of personal property where it has

(a) The code authorizes proceedings by attachment in suits in equity. *American Land Co. v. Grady*, 83—550.

(*) An action for *damages* is an action for money. See SEC. 6346.

(**) In proceedings by attachment against the property of a non-resident, the statute must be strictly followed. *Bush v. Visant*, 40—124.

(b) See note (d).

(c) If a debtor is removing his property out of the state, not leaving sufficient to pay all his debts, a creditor may attach, although sufficient be left to pay his debt; and testimony of other debts is admissible to prove the insufficiency of the property to pay all. *Holliday v. Cohen*, 34—707.

See note (*) to SEC. 361.

(d) A sale or conveyance by a debtor to cheat, hinder or delay any one creditor, or his removal from the county of his residence to avoid the service of summons by any one creditor, will justify an attachment of his property. *Sherrill v. Bench*, 37—560.

been ordered to be delivered to the plaintiff, and where the property, or part thereof, has been disposed of, concealed or removed, so that the order for its delivery can not be executed by the officer. *Civil Code, sec. 216.*

HOW OBTAINED.

SEC. 310. An order of attachment shall be made by the clerk of the court in which the action is brought in any case mentioned in the first subdivision of the preceding section, where there is filed in his office an affidavit of the plaintiff or of some one in his behalf, showing (e):

First. The nature of the plaintiff's claim.

Second. That it is just.

Third. The amount which the affiant believes the plaintiff ought to recover; and,

Fourth. The existence in the action of some one of the grounds for an attachment enumerated in that subdivision, and in the case mentioned in the second subdivision of the preceding section where it is shown by such affidavit, or by the return of the sheriff or other officer upon the order for the delivery of the property claimed, that the facts mentioned in that subdivision exist. *Civil Code, sec. 217, as amended 1871.*

SEC. 311. When the return by the proper officer upon a summons against a defendant states that he has left the county to avoid the service of the summons, or has concealed himself therein for that purpose, it shall be equivalent to the statement of the fact in the affidavit mentioned in the last section.

SEC. 312. The order of attachment shall not be issued by the clerk until there has been executed in his office, by one or more sufficient sureties of the plaintiff, a bond to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the attachment if the order is wrongfully obtained (f).

SEC. 313. The order of attachment shall be directed and delivered to the sheriff or other officer, with as many copies thereof as the plaintiff may direct. It shall require him to attach and safely keep the property of the defendant in his county, not exempt from execution, or so much thereof as will satisfy the plaintiff's claim specified in his affidavit; which shall be stated in the order, and the probable costs of the action, not exceeding thirty dollars(*); also to summon the garnishees to answer in the action on the return day of the order, and to make due return thereof. The return day of the order of attachment when issued at the commencement of the action shall be the same as that of the summons; when issued afterward it may be another day in term, at the option of the plaintiff.

SEC. 314. Orders of attachment may be issued to the sheriffs or other officers of other counties, and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have

(e) See note (f) *post*.

(f) The defendant can not object in the supreme court, for the first time, that no bond was filed by the plaintiff before the order of attachment was issued; nor can he object in that court, for the first time, that the affidavit for the attachment was insufficient. Such objections must first be made in the circuit court. *Fletcher v. Menken, 37—206.*

(*) See note (f) to SEC. 363.

been executed in whole or in part shall be taxed in the costs unless otherwise directed by the court.

SEC. 315. The affidavit or grounds of attachment may be amended so as to embrace any grounds of attachment that may exist up to and until the final judgment upon the same. If the amendment embrace grounds existing at the time of the commencement of said proceeding, and is sustained upon such grounds, the lien created by the suing out or levying of the original attachment shall be held good; but if the amendments embrace new grounds not existing at the time of suing out the original attachment, and the attachment shall be sustained on such new grounds only, the lien shall exist on the property levied upon from the filing of the same; and a general order sustaining the attachment, without designating the grounds upon which it is sustained, shall be equivalent to sustaining the same on grounds that existed at the time the attachment was sued out (g).

SEC. 316. Attachments may be sued out, and the actions in which the same are obtained may be prosecuted in any county in which property may be attached, or a garnishee, who is indebted or has property belonging to the defendant, is served with process. *Civil Code, secs. 218-223.*

SEC. 317. Whenever, in a civil action, the plaintiff shall have reason to believe that any other person is indebted to the defendant, or has in his hands or possession goods and chattels, moneys, credits and effects belonging to such defendant, the plaintiff may sue out a writ of garnishment, setting forth his cause of action against the defendant, and commanding the officer charged with the execution thereof to summon the person therein named as garnishee to appear at the return day of the summons in the action, if the writ shall have been issued at the commencement thereof; and, if not so issued, on such day as the court shall designate, to answer what goods, chattels, moneys, credits and effects he may have in his hands or possession belonging to such defendant; and in all such actions, where the plaintiff shall have obtained judgment, he may sue out a writ of garnishment setting forth such judgment, and shall proceed in the manner herein directed for the enforcement and collection thereof (h).

SEC. 318. The plaintiffs in all cases of garnishment may also have an attachment against the property of a garnishee, who is made a defendant thereto, by stating in his affidavit some one or more of the grounds of attachment mentioned in this chapter, and the amount which the garnishee is indebted to the principal debtor, and executing bond to said garnishee. *Civil Code, sec. 224, as amended 1871.*

EXECUTION AND RETURN OF (i).

SEC. 319. Where there are several orders of attachment against the same defendant they shall be executed in the order in which they were received by the sheriff or other officer.

(g) An affidavit for an attachment may be amended by inserting an omitted fact existing when it was made after judgment of quashal for the insufficiency. *Nolen v. Royston*, 36—561; *Rogers v. Cooper*, 33—406.

An affidavit in the court of a justice of the peace may be amended after appeal in the circuit court if the amendment contains no cause for attachment not existing at the commencement of the suit. *Sherrill v. Bench*, 37—560.

(h) It is only in suits by attachment that this section authorizes the issuance of a writ of garnishment before judgment against the defendant. *Letingardt v. Deitz*, 30—224; *Littlejohn v. Lewis*, 32—423.

(i) The plaintiff's right to an attachment is not affected by the manner in which the order of attachment is executed. The execution of the order, if wrongful, may be quashed, or the return, if defective, may be

SEC. 320. The order of attachment shall be executed by the sheriff or other officer without delay, in the following manner:

First. Upon real property by leaving with the occupant thereof, or, if there is no occupant, in a conspicuous place thereon, a copy of the order.

Second. Upon personal property, capable of manual delivery, by taking it into his custody and holding it subject to the order of the court.

Third. Upon other personal property by delivering a copy of the order, with a notice specifying the property attached, to the person holding the same; or, as to a debt or demand, to the person owing it; or, as to stock in a corporation, or property held, or a debt or demand owing by it, to the chief officer, or to the secretary, cashier, treasurer or managing agent thereof, and by summoning the person or corporation to answer as a garnishee in the action. The sheriff shall deliver copies to and summon such persons as garnishees as the plaintiff may direct.

SEC. 321. It shall be the duty of every person mentioned in the third subdivision of the last section, to whom the sheriff shall apply therefor, to furnish him with a certificate of the number of shares of the defendant in the stock of the corporation, a description of the property held by such corporation or person belonging to or for the benefit of the defendant, or the amount of the debt owing to the defendant by such corporation or person, whether due or not; and a failure to perform this duty may be punished by the court as a contempt.

SEC. 322. The defendant's personal property shall be first taken under an attachment; if enough thereof is not found, then his real property (*).

SEC. 323. Where the property to be attached is a fund in court, the execution of the order of attachment shall be by leaving with the clerk of the court a copy thereof, with a notice specifying the fund; and where several orders of attachment are executed upon such fund on the same day, they shall be satisfied out of it ratably.

SEC. 324. The sheriff shall not, in executing an order of attachment upon personal property held by the defendant jointly or in common with another person, take possession of such property until there has been executed a bond to such other person, by one or more sufficient sureties of the plaintiff, to the effect that he shall pay to such person the damages he may sustain by the wrongful suing out of the order. *Civil Code, secs. 226-231.*

SEC. 325. An order of attachment binds the defendant's property in the county, which might be seized under an execution against him, from the time of the delivery of the order to the sheriff or other officer; and the lien to the plaintiff is completed upon any property or demand of the defendant by executing the order upon it in the manner directed in this chapter (j). *Civil Code, sec. 232, as amended 1871.*

SEC. 326. If, after an order of attachment has been placed in the hands of the sheriff or other officer, any property of the defendant is removed from the county, the sheriff may pursue and attach the same in another county within twenty-four hours after removal (k).

amended to conform to the facts; in either case there is no cause for discharging the attachment. *Kurts v. Dunn*, 36-648.

(*) As to when an order of attachment issued by a justice of the peace may be levied upon real property, and for proceedings to sell such property when so levied upon, see SECS. 4125-4126.

(j) See *Harrison v. Trader*, 29-85; *Field, Brown et al. v. Dortch*, 34-399; note (q) *post*.

(k) See *Blevins v. State*, 31-53.

SEC. 327. The sheriff may deliver any attached property to the person in whose possession it was found, upon the execution, in the presence of the sheriff, of a bond to the plaintiff, by such person, with one or more sufficient sureties, to the effect that the obligors are bound, in double the value of the property, that the defendant shall perform the judgment of the court in the action, or that the property, or its value, shall be forthcoming and subject to the orders of court for the satisfaction of such judgment (l).

SEC. 328. For the purpose of taking this bond, the sheriff shall cause the property to be appraised by three disinterested householders, to be selected and sworn by him to make fair appraisalment on the order of attachment.

SEC. 329. In any proceeding on this bond, it shall not be a defense that the property was not subject to the attachment.

SEC. 330. The sheriff shall return, upon every order of attachment, what he has done under it. The return must show the property attached, the time it was attached, and the disposition made of it (m). Where garnishees are summoned, their names, and the time each was summoned, must be stated. And where real property is attached, the sheriff shall describe it with sufficient certainty to identify it, and, where he can do so, a reference to the deed or title under which the defendant holds it. He shall return with the order all bonds taken under it. *Civil Code, secs. 233-237.*

DISPOSITION OF ATTACHED PROPERTY.

SEC. 331. The court shall make proper orders for the preservation and use of the property during the pending of the action, and for paying into court or securing the debts and funds attached. It may direct a sale of the property where, by reason of its perishable nature or of the cost of keeping it, a sale would be for the benefit of the parties (n).

SEC. 332. Such sale may be ordered by the judge of the court in vacation, but no such sale shall be made in vacation without reasonable notice in writing to the opposite party or his attorney, if either of them reside in the county in which the cause is pending, of the time and place of the application therefor.

SEC. 333. The sale shall be public, after advertisement, and made in such manner and upon such terms of credit with security as the court or judge, having regard to the probable duration of the action, may direct.

SEC. 334. The proceeds, if collected by the sheriff, together with all the money received by him from garnishees, shall be held and paid over by him under the same requirement and responsibilities of himself and his sureties as

(l) The obligors in a bond executed under this section have a right to retain the property until the court orders a sale of it to satisfy the judgment against the defendant. When such order is made, they may pay off the judgment, or ~~must~~ deliver the property, or its value, to the sheriff. *Adams v. Jacoway*, 34-542.

By executing the bond provided for in this section, the sureties become parties to the suit and subject to summary judgment in the action, without service of notice or process upon them. *Fletcher v. Meukow*, 37-206. See SEC. 355 and note (w) thereto.

(m) It is the duty of an officer who seizes property under attachment to retain control of it, so he may return it if required. *Foyis v. State*, 33-70.

(n) Attached property is within the control of the court; the plaintiff has no right to it as property, and to remove and sell it, with or without the consent of the attaching officer, is a contempt of court which a party commits at his peril. *Atkins v. Scope*, 38-528.

The court has the inherent power to compel the plaintiff to account for attached property converted by him before giving judgment for him or allowing execution; or, if judgment be against him, may compel him to refund. *Id*

are provided in respect to money deposited in lieu of bail. *Civil Code, sec. 238, as amended 1871.*

SEC. 335. A judge of the court in which the action is brought or any circuit judge shall have power to appoint a receiver to take charge of, collect and account for all choses in action attached in any action, and said receiver shall have full power to collect the same.

He shall give bond, and in all respects be subject to the same responsibilities as if appointed by the court in term time. And the defendant or any claimant of any attached property may be required by the court or by such receiver to give information on oath respecting such property. *Ib., sec. 239 and sec. 791, as amended 1873.*

SEC. 336. When it appears by the affidavit of the plaintiff, or by the return of an officer to an order of attachment, that no property is known to the plaintiff or the officer on which the order of attachment can be executed, or not enough to satisfy the plaintiff's claim, the defendant may be required by the court to attend before it and give information on oath respecting his property; and where it also appears, by the affidavit of the plaintiff, that some person other than the defendant has in his possession property of the defendant or evidences of debt, such person may also be required by the court to attend before it and give information on oath respecting the same.

PROCEEDINGS UPON ATTACHMENT.

SEC. 337. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff by one or more sufficient sureties, to be approved by the court, to the effect that defendant shall perform the judgment of the court, the attachment shall be discharged and restitution made of any property taken under it, or the proceeds thereof (o). *Civil Code, secs. 241 and 242.*

SEC. 338. The execution by or for the defendant of such bond shall be an appearance of such defendant in the action (p). *Civil Code, sec. 793.*

SEC. 339. The bond mentioned in the last two sections may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect upon the attachment as if executed in court, the sureties, in either case, to be approved by the officer.

SEC. 340. The garnishee may pay the money owing to the defendant by him to the sheriff having in his hands the order of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he discloses the property of the defendant in his hands, or the true amount owing by him, and delivers or pays the same according to the order of the court, he shall be allowed his costs.

SEC. 341. Each garnishee summoned shall appear. The appearance may be in person or by affidavit of the garnishee filed in court, disclosing truly the

(o) In a suit in which no affidavit or bond for attachment was filed nor order of attachment issued, the bond of a surety under this section is unauthorized, answers no purpose, and gives the court, as to him, no jurisdiction. *Williams v. Skipwith, 34—830.*

(p) See note (l) ante and SEC. 354.

amount owing by him to the defendant, whether due or not, and the property of the defendant in the possession or under the control of the garnishee; and, in the case of a corporation, any shares of stocks therein held by or for the benefit of the defendant, at or after the service of the order of attachment (q).

SEC. 342. Where a garnishee, or officer of a corporation summoned as a garnishee, appears in person, he may be examined on oath; and if it is discovered on such examination that, at or after the service of the order of attachment upon him, he or the corporation was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property, and the payment or security for the payment of the amount owing by the garnishee into the court, or to such person as it may direct, who shall give bond, with security for the same; or, the court may permit the garnishee to retain the property or the amount owing, upon the execution of a bond, with one or more sufficient sureties, to the effect that the amount shall be paid or the property shall be forthcoming, as the court may direct. Performance of these bonds may be summarily enforced by orders and proceedings as in cases of contempt.

SEC. 343. The court may, on the motion of the plaintiff, compel the appearance in person and examination of any garnishee or officer of a corporation summoned as a garnishee by process as in cases of contempt; or, where a garnishee makes a default by not appearing, it may hear proof of any debt or property owing or held by him to or for the defendant, and make such order in relation thereto as if what is so proved had appeared on the examination of the garnishee.

SEC. 344. Upon the service of a summons upon any garnishee, or after his failure to make a disclosure satisfactory to the plaintiff, the latter may proceed in an action against him by filing a complaint, verified as in other cases, and causing a summons to be issued upon it; and thereupon such proceeding may be had as in other actions, and judgment be rendered in favor of the plaintiff to subject the property of the defendant in the hands of the garnishee, or for what shall appear to be owing to the defendant by the garnishee. The judgment may be enforced by execution or other proper means.

SEC. 345. If judgment is rendered in the action for the defendant, the attachment shall be discharged and the property attached, or its proceeds shall be returned to him (r). *Civil Code, secs. 243-249.*

SEC. 346. In all actions of attachment in which the defendant shall recover judgment for the discharge of the attachment, the court or jury trying said attachment shall assess the damages sustained by the defendant by reason of such attachment, and the court shall render judgment against the plaintiff and his sureties in the attachment bond for the amount of such damages and cost of the attachment (s). *Act Nov. 10, 1875.*

(q) The lien of an attachment binds the defendant's property in the county, subject to execution, from the time the writ is delivered to the officer, and a purchase of his property after that time is subject to the lien; but the lien of a garnishment dates from the time the garnishment writ is served upon the garnishee, and a sale and transfer by the defendant of choses in action, not subject to execution, before such service will be good. *Bergman v. Sells & Co.*, 39-97.

The burden of proof that a purchase of debts made on the same day of the service of a garnishment was before the service is upon the purchaser. *Ib.*

See also *Adams v. Penzell & Co.*, 40-531.

(r) See note (n) *ante*. *Jackman v. Anderson*, 33-414.

(s) As to when judgment discharging an attachment is conclusive evidence that it was wrongfully issued, see *Boatright v. Stewart*, 37-614.

SEC. 347. If judgment is rendered for the plaintiff, the court shall apply in satisfaction thereof—

First. The moneys arising from the sales of perishable property.

Second. The proceeds of the debts and funds attached in the hands of the garnishees. If these are not sufficient to satisfy the plaintiff's claim, the court shall order a sale, by the sheriff, of any other attached property which may be under its control, in the following order:

1. Personal property.

2. Real property, or so much thereof as may be necessary to satisfy the plaintiff's claim (t).

SEC. 348. No order for the sale of real property so attached shall be made in any action in which the defendant has not appeared or been actually summoned, until there has been filed an affidavit of the plaintiff, or of his agent or attorney, to the effect that the defendant has no personal property, or not enough to satisfy the claim of the plaintiff, in this state, known to the affiant.

SEC. 349. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

SEC. 350. The sales shall be public, upon such notice and at such time and place as the court may direct. When credits are given, bonds, with security, shall be required; and the credit shall not be longer than three months for personal property, and not less than three or more than twelve months for real property, or on installments equivalent to not more than twelve months' credit on the whole; and upon real property a lien shall be retained. The sales shall be subject to the confirmation of the court.

SEC. 351. The court may compel the delivery to the sheriff, for sale, of any of the attached property for which a bond may have been given, and may proceed summarily on such bond to enforce the delivery of the property or the payment of such sums as may be due upon the bond, by rules and attachments as in cases of contempt.

SEC. 352. The court may, from time to time, make and enforce proper orders respecting the property, sales and the confirmation thereof, and the application and payment of the moneys collected.

SEC. 353. It may order the sheriff to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands, without having been sold or converted into money; and the sheriff

There should be no assessment of damages upon the discharge of an attachment before the trial or final disposition of the case. *Kurtz v. Dunn*, 36—648; *Holiday v. Cohen*, 34—707. As to assessment of damages on attachment bonds in cases where there is no final trial, see the case last cited.

In proceedings under this section and under sections 354, 355, no service of notice or process on the sureties is necessary. *Fletcher v. Menken*, 37—206.

Upon the discharge of an attachment, only such damages can be recovered by the defendant as are actual, and the natural and direct, consequences of the attachment, and these do not include attorney's fees. *Patton v. Garrett*, 37—605. Nor damages for injury to credit and loss of prospective profits in business. *Holiday v. Cohen*, 34—707.

The plaintiff and his sureties are liable for any waste occurring to the attached property in the hands of the officer levying the attachment. *Boatright v. Stewart*, 37—614. See the same case for additional ruling as to measure of damages caused by wrongful attachment.

(t) For rule as to application of proceeds of the sale of real estate in attachment proceedings, see *Hanauer & Co. v. Casey, adm.*, 26—352.

As to sale of lands not attached under a personal judgment and execution, where there is only constructive service, see *Wilson and wife v. Spring*, 38—181.

As to personal judgments in attachment cases, and the former and present practice in disposing of attached property, see *Field, Brown et al. v. Dorich*, 34—407.

As to sale of property when defendant is constructively summoned and does not appear, see SEC. 5190; *Bush v. Visant*, 40—124.

shall, under such order, have the same power to take the property as upon an order of attachment (u). *Civil Code, secs. 250-256.*

SEC. 354. If the plaintiff shall recover against the defendant, and the attachment shall have been discharged upon the execution of a bond, as provided by section three hundred and thirty-seven, then the court shall render judgment against the defendant and his sureties in said bond for the amount recovered and the cost of the suit (v).

SEC. 355. If the defendant shall have given bond for the retention of the property attached, as provided by section three hundred and twenty-seven, and the attachment shall be sustained, the court or jury, in addition to finding the amount of debt or damages due to the plaintiff, shall, upon demand of the plaintiff, also assess the value of the property attached, and the court shall, in addition to judgment against the defendant for the amount found due to the plaintiff and costs, render further judgment, that in case said property shall not be delivered up to the proper officer to be sold, and said officer shall not be able to make said judgment out of the property of said defendant, execution shall then issue against the property of said sureties for so much of said judgment as shall not exceed the value of said property, which execution shall be enforced as in other cases (w). *Act Nov. 10, 1875.*

SEC. 356. Any person may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or of any attached debt, present his complaint, verified by oath, to the court disputing the validity of the attachment, or stating a claim to the property (*), or an interest in or lien on it under any other attachment or otherwise, and setting forth the facts upon which such claim is founded, and his claim shall be investigated.

SEC. 357. A non-resident claimant shall, in such cases, give security for costs.

SEC. 358. The court may hear the proof, or may order a reference to a commissioner, or may impanel a jury to inquire into the facts. If it is found that the claimant has a title to, a lien on or any interest in such property, the court shall make such order as may be necessary to protect his rights. The costs of this proceeding shall be paid by either party at the discretion of the court.

SEC. 359. Where several attachments are executed on the same property the court, on the motion of any one of the attaching plaintiffs, may order a reference to a commissioner to ascertain and report the amounts and priorities of the several attachments.

SEC. 360. The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff, and if, on such motion, the court is satisfied that the surety in the plaintiff's bond has removed from this state, or is not sufficient for the amount

(u) See note (n) *ante*.

(v) See note (l) *ante*; *Brugman v. McGuire*, 32—733. For construction of secs. 346, 354 and 355 see *Holiday v. Cohen*, 34—707.

(w) The judgment provided for in this section must be for the value of the property as found by the court or jury trying the case, and not the value fixed by the appraisers for taking the bond. *Fletcher v. Menken*, 37—206. See also *Creanor v. Creanor*, 36—94.

In an action against the principal and sureties on a note, when the principal executes a delivery bond with sureties, the latter are, as between them and the sureties on the note, primarily liable to the extent of the value of the property attached for the satisfaction of the debt. *Id.*

(*) One claiming the property, upon making oath to his claim and giving bond, may have the property delivered to him. See SECS. 390-395.

thereof, it may vacate the order of attachment and direct restitution of any property taken under it, unless in a reasonable time, to be fixed by the court, sufficient security is given by the plaintiff (x).

ATTACHMENTS, BEFORE DEBT DUE.

SEC. 361. In an action brought by a creditor against his debtor, the plaintiff may, before his claim is due, have an attachment against the property of the debtor, where—

First. He has sold, conveyed or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or,

Second. Is about to make such fraudulent sale, conveyance or disposition of his property with such intent; or,

Third. Is about to remove his property, or a material part thereof, out of this state, with the intent or to the effect of cheating or defrauding his creditors, or of hindering or delaying them in the collection of their debts (*). *Civil Code, secs. 257-259.*

SEC. 362. The attachment authorized by the last section may be granted by the court in which the action is brought, or the clerk or judge thereof, or any circuit judge, in vacation, where the complaint, verified by oath of the plaintiff, his agent or attorney, shows any of the grounds for attachment enumerated in that section, and the nature and amount of the plaintiff's claim, and when the same will become due. *Civil Code, secs. 260, 791, as amended 1871, 1873, and by act March 18, 1881.*

SEC. 363. The order of the court, or the clerk or judge, granting the attachment, shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable cost of the action (†).

SEC. 364. The order of attachment, as granted by the court, or the clerk or judge, shall not be issued by the clerk until there has been executed in his office such bond on the part of the plaintiff as is directed in cases of attachment, and the provisions of this chapter, so far as they are applicable, shall apply to attachments for debts not due. *Civil Code, secs. 261 and 262, and act March 18, 1881.*

ATTACHMENTS SPECIFIC.

SEC. 365. In an action to enforce a mortgage of, or lien upon, personal property, or for the recovery, partition or sale of such property, or by a plaintiff having a future estate or interest therein, for the security of his rights, where it satisfactorily appears by the complaint, verified on oath, or by affidavits or the proofs in the cause, that the plaintiff has a just claim, and that the property is

(x) When objections to an attachment bond are sustained by the court, the filing of an amended bond, under the leave and approval of the court, will cure the defects of the original bond and support the attachment and lien. *Bergman v. Sells & Co.*, 39—97.

(*) Shipping cotton by a debtor of this state to a creditor in another state in payment of a debt, in good faith and without fraudulent intent, will not authorize an attachment even if the debtor be in failing circumstances. *Rice, Stiz & Co. v. Pertuis*, 40—157.

(†) A writ of attachment is not invalid for containing a summons for the defendant. *Well v. Küttay*, 40—528.

about to be sold, concealed or removed from the state, or where the plaintiff states, on oath, that he has reasonable cause to believe, and does believe, that, unless prevented by the court, the property will be sold, concealed or removed from the state, an attachment may be granted against the property (y).

SEC. 366. In an action by a vendor of property fraudulently purchased, to vacate the contract and have a restoration of the property, or compensation therefor, where the complaint shows such fraudulent purchase of property and the amount of the plaintiff's claim, and is verified by his oath, an attachment against the property may be granted (z). *Civil Code, secs. 264-265.*

SEC. 367. The attachments in the cases mentioned in the last two sections may be granted by the court in which the action is brought, or by the judge or clerk thereof, or any judge of the circuit court, upon such terms and conditions as to security on the part of the plaintiff for the damages which may be occasioned by them, and with such direction as to the disposition to be made of the attached property, as may be just and proper under the circumstances of each case. *Civil Code, secs. 266, 791, as amended 1871, 1873, and by act March 9, 1877.*

SEC. 368. In every case the plaintiff shall be required to give security for the damage to the defendant in an adequate sum to be specified in the order granting the attachment; and, when it may be proper, the court or judge or clerk thereof may direct that the defendant or person in possession of the attached property shall be permitted to retain it upon giving bond, with security, and for such sum as the court or judge or clerk thereof may prescribe.

SEC. 369. No order of attachment shall be issued by the clerk until the bond on the part of the plaintiff, required by the order of the court or judge or clerk thereof, is executed and filed in his office by one or more sufficient securities of the plaintiff.

SEC. 370. The order of attachment shall describe the specific property against which it is issued, and shall have indorsed upon it the direction of the court or judge or clerk thereof as to the disposition to be made of the attached property. It shall be directed, executed and returned as other orders of attachment.

SEC. 371. The sheriff shall make such disposition of the attached property as may be directed by the court, judge or clerk thereof, and when there is no direction upon the subject, he shall safely keep the property, subject to the order of the court. *Civil Code, secs. 267-270, as amended by act March 9, 1877.*

SEC. 372. The court may, in any of the cases mentioned in sections 365 and 366, direct the terms and conditions of the bond to be executed by the defendant, with security, in order to obtain a discharge of the attachment.

SEC. 373. Where, after an order of attachment against specific property has been placed in the hands of the sheriff, such property is removed from the county, the sheriff may pursue and attach it in another county within twenty-four hours after such removal.

SEC. 374. Where it appears by return of the sheriff, or by the affidavit of the plaintiff, that any specific property against which an order of attachment is issued has been concealed or removed by the defendant, the court may require

(y) Justices of the peace have no jurisdiction under this section, which refers alone to circuit courts. *Lemay v. Williams, 32-166.*

(z) Attachment is no remedy for the recovery of specific property. *Gates v. Bennett, 33-475.*

him to attend and be examined on oath respecting such matter, and may enforce its orders in this respect as in cases of contempt.

SEC. 375. Performance of bonds to obtain discharge of specific attachments, or for the forthcoming of property specifically attached, may in all cases be summarily enforced by rules and proceedings as in cases of contempt.

SEC. 376. The provisions of this chapter may be applied, so far as shall be proper, to regulate the proceedings in cases of attachments against specific property.

DISCHARGE AND REINSTATEMENT OF ATTACHMENT.

SEC. 377. An attachment obtained at the commencement of an action shall be sustained or discharged at the time that judgment is rendered in the action, unless for sufficient cause the court extends the time of deciding upon it. An attachment obtained after the commencement of an action shall not be sustained until the defendant has had the time for controverting it provided in this chapter.

SEC. 378. If judgment is rendered in favor of the defendant, the attachment shall be discharged.

SEC. 379. If judgment is rendered in favor of the plaintiff, and no affidavit or answer, verified by oath, by the defendant filed, denying the statements of the affidavit upon which the attachment was issued, or motion made to discharge it, the court shall sustain the attachment.

SEC. 380. Upon an attachment being sustained, the property attached, or its proceeds, or the securities taken upon the attachment shall, by appropriate orders, be applied in satisfaction of the judgment.

SEC. 381. The defendant may file his affidavit denying all or any of the material statements of the affidavit upon which the attachment is issued, and thereupon the attachment shall be considered as controverted, and the affidavits of the plaintiff and defendant shall be regarded as the pleadings in the attachment, and have no other effect. Where the attachment was obtained at the commencement of an action, the defendant may file his affidavit at such time after the levy of the attachment as is given by law for filing his defense, after the service of the summons, which period may be extended by the court for sufficient cause (aa).

SEC. 382. Either party may take proof by deposition, to be read on the trial of the attachment, or, by permission of the court, the witnesses may be orally examined in court.

SEC. 383. At any time before the attachment is sustained the defendant, upon reasonable notice to the plaintiff, or his attorney, may move the court to discharge the attachment, the hearing of which may be postponed by the court, upon sufficient cause, from time to time; and, upon the hearing, if the court is of opinion that the attachment was obtained without sufficient cause, or that the grounds of attachment, being controverted, are not sustained, the attachment shall be discharged.

SEC. 384. The order for the discharge of an attachment, made at or after the rendition of judgment in the action, shall be final, but shall be subject to

(aa) For the proper practice under SECS. 346, 354, 355, 381-383, see the opinion of the court in *Holiday v. Cohen*, 34-707; note (s) *ante*.

appeal. The order sustaining the attachment shall also, in like manner, on the rendition of judgment in the action, be subject to appeal (bb). *Civil Code, secs. 271-283.*

SEC. 385. The defendant, on reasonable notice to the plaintiff, may, at any time before the term next after the levy of the attachment, move the judge of the court in vacation to discharge the attachment, on the grounds of its having been issued contrary to the provisions of this chapter; and the judge, on an inspection of the papers in the action, or of the authenticated copies of them, shall have the same power of discharging the attachment by his written order, filed by the clerk, as he would have in court, and shall have like power to permit amendments by the plaintiff.

SEC. 386. In all actions in which attachments may be pending in the circuit court, held in any county, and in the inferior courts of said county, and which have been levied upon the same property, in whole or in part, it shall be the duty of the judge of said circuit court, or of said inferior court, upon the motion of either party in said action or actions, to make an order for the removal of the actions pending in the said inferior court to said circuit court, where they shall be tried as if originally brought in said circuit court.

SEC. 387. In all actions which may be brought in the circuit court, and in which attachments may be pending, and which may be levied upon the same property, in whole or in part, the judge of said court where said actions are pending shall have power to make an order for the removal of said actions, or some of them, by change of venue, so as to have them all upon the same docket and under the control of the same court. Such order of removal shall only be made upon petition filed, and in such cases as the judge shall be satisfied that such removal is necessary for the proper distribution of the attached property and the adjustment of the rights of the parties to said actions; and in making said order of removal due regard shall be had to the convenience of the parties.

SEC. 388. Said order of removal may be made in open court, or by the judge of said court in vacation; but in either case notice of the application shall be given to the opposite party, and affidavit may be read for and against such application.

SEC. 389. Where said order of removal is made, it shall be the duty of the clerk of said circuit court, and of the judges of said inferior courts, immediately to remove the papers in said action as directed by said order, and to file an authentic copy of the orders which have been made in said case or cases. If the order of removal is to another county, the clerk shall have the same fees now allowed for like services in other cases of change of venue, to be paid in advance by the applicant for the removal, and to be taxed as costs, and finally paid out of the attached funds, or by such of the parties as the court shall order. *Civil Code, secs. 285 and 288-291.*

INTERPLEADER.

SEC. 390. When a sheriff shall levy a writ of attachment upon property claimed by a person not a party to the writ, such person may make oath to the

(bb) The lien on real estate created by the levy of an attachment is preserved as between the parties on the reversal of a judgment dissolving the attachment, although no *supersedeas* bond was filed in prosecuting an appeal or writ of error. *Harrison v. Trader*, 29-85.

property, and the same shall be delivered to him upon his giving bond in favor of the plaintiff, with security, to be approved by the sheriff, in a sum double the value of the property attached, which value shall be ascertained by the oaths of two citizens of the county where the writ is levied, to be chosen by the sheriff (cc).

SEC. 391. Such bond shall be conditioned that the said claimant will interplead at the term of the court to which said writ shall be returnable; that he will prosecute such interpleader to judgment without delay, and if, on the trial of such interpleader, the said property shall be found to be the property of the defendant in such writ, and the plaintiff shall recover judgment against said defendant, the property shall be delivered to said sheriff or his successor in office whenever demanded by such sheriff, after execution upon such judgment comes to his hand to be levied thereon. In case the property so levied upon shall not be delivered as aforesaid, said bond shall have the force and effect of a judgment for the amount of the appraised value of such property and the costs of the interplea, if such appraised value be less than the amount of the judgment rendered in the original case, and, if more, for the amount of said judgment and costs, on which judgment execution against all the obligors may issue.

SEC. 392. Such bond shall be returned by the sheriff with the writ.

SEC. 393. If any person to whom such property is so returned shall neglect or refuse to deliver the same to the sheriff, in accordance with the condition of the bond, it shall be the duty of such sheriff forthwith to return the writ of *feri facias* issued upon the original judgment in said cause, setting forth the fact that the condition of the bond has been broken (dd).

SEC. 394. On the return of such writ of *feri facias*, showing the forfeiture of said bond, it shall be the duty of the clerk of the court to which said writ is returned to issue an execution in favor of the plaintiff against all the obligors for the amount which may be due on such forfeited bond. *Act Jan. 19, 1861.*

(cc) See SEC. 356. *State, use, Hecht v. Spikes*, 33—801.

An interpleader may present his claim to the attached property as an independent proceeding without reference to any controversy between other parties, and the determination of it does not affect the right of property as between him and the defendant in the attachment or other person. *Bloom v. McGehee*, 38—329.

(dd) For form of judgment entry, etc., on trial of interplea under this act, see *Adams et al. v. Hobbs*, 27—1.

The appraisement of attached property, when claimed by a third person, as provided for in section 390, is the foundation to the statutory proceedings against the obligors on the interpleader's bond; and, if no such appraisement be made and shown by the officer's return, the statutory judgment on the bond does not accrue. Nor does it accrue then, until the officer shows by his return on the *feri facias* issued against the defendant in the original action the failure of the obligors to deliver the property according to the conditions of the bond. *Turner v. Collier & Davis*, 37—323.

CHAPTER X.

ATTACHMENTS OF BOATS, VESSELS, ETC. (ff).

SECTION

395. Boats and vessels, for what contracts liable.
 396. Liable for torts.
 397. Sued by name, attached.
 398. What debts against, have preference.
 399. Attachment, how obtained.
 400. Owners by name, or boat, proceeded against.

SECTION

401. Form of attachment bond.
 402. Declaration or statement of plaintiff, what to state.
 403. Proceedings same as in other cases of.
 404. Who may sue.
 405. Counter bond, effect of.

SECTION 395. All boats and vessels, of all descriptions, built, repaired, equipped or running upon any of the navigable waters of this state, shall be liable for contracts of every kind made by the owners, masters or supercargoes of such boats or vessels, for or on account of such boats or vessels.

SEC. 396. When such boats or vessels shall commit any tort whatever, such boats or vessels shall be liable for the same.

SEC. 397. For all contracts and torts mentioned in this act, such boats or vessels may be sued by name or description, and attached, in the manner now prescribed by law. *Act Dec. 7, 1860, secs. 1-3.*

SEC. 398. Debts due from the owners or proprietors of the said boats or vessels, for the wages of mariners, boatmen and others employed in the service of said boats or vessels, shall have preference over all other debts and claims and be first paid.

SEC. 399. Any person having a demand, contracted as above mentioned, against any such boat or vessel, upon affidavit being made and filed with the clerk of the circuit court, or any justice of the peace, setting forth the nature and the amount of such demand (gg), and giving bond as in other cases of attachment, may have an attachment, to be issued by the clerk of the circuit court, or by any justice of the peace having jurisdiction of the amount claimed, in any county in the state in which such boat or vessel may be found.

SEC. 400. The plaintiff may make his election either to proceed against the owner or owners by their proper names, or by the name and style of their partnership, if known, or against such boat or vessel by her name or description only, which writ shall authorize and direct the seizure and detention of such boat or vessel, her engine, machinery, sails, rigging, tackle, apparel and furniture, by the sheriff or constable.

SEC. 401. In all cases where such proceedings are instituted against such boat or vessel by her name or description only, the bond to be given by the plaintiff shall be made payable to the "State of Arkansas," for the use and benefit of the owners of such boat or vessel, who may institute a suit thereon,

(ff) It is settled by the judgment of the supreme court of the United States, that state statutes authorizing proceedings *in rem* against boats, on causes of action which fall within the admiralty jurisdiction of the district courts of the United States, are in conflict with article III, section 2, of the constitution of the United States, and the act of congress passed in pursuance thereof, and void. See art. III, sec. 2, *Const. United States*, and *note (ff) thereto*, and *Rose's Digest*, p. 75, *note*.

(gg) For the attachment of boats in the state courts the same affidavit is required as in attachment of other property. *Thompson v. Robinson*, 34—44.

if damages be occasioned by the issuing of such attachment wrongfully, and have recovery thereon, in the same manner as if said bond had been given to such person in his proper name, or in the name and style of the partnership.

SEC. 402. Upon the return of such attachment the plaintiff shall file a written declaration or statement against such boat or vessel, by her name or description, or against the owner, as the case may be, briefly reciting the nature of the demand, whether for work and labor done, or materials, firewood or supplies of provisions furnished, and whether at the request of the owner, master, supercargo or consignee of such boat or vessel, and that such demand remains unpaid, annexing to such declaration or statement a bill of the particulars constituting such demand, in separate and distinct items.

SEC. 403. Such attachment shall proceed in like manner, in all other respects, and the like judgment and execution shall be had, as in other cases of attachment.

SEC. 404. All engineers, pilots, mariners, boatmen and others employed in any capacity in or about such boat or vessel, who may be entitled to arrearages of wages in consequence of such services, may proceed to collect such wages under the provisions of this act, and shall be entitled to all the benefits thereof.

SEC. 405. If the owner, master, supercargo or consignee of any such boat or vessel seized by attachment shall, at any time before judgment, give bond to the plaintiff, with security, to be approved of by the clerk of the circuit court, or by the judge in term time or justice of the peace, as the case may be, in double the amount of the demand sued for, conditioned to pay and satisfy such judgment as the court or justice may render against such boat or vessel, or against such owner, as the case may be, together with cost of suit, then such boat or vessel shall forthwith be discharged from such attachment, seizure and detention, but shall, nevertheless, be liable to be taken and sold on any execution to be issued on any such judgment, or upon the judgment that may be rendered at any time on the bond required to be given by the defendant party. *Rev. Stat., chap. 14.*

CHAPTER XI.

ATTORNEYS AT LAW.

SECTION

HOW ADMITTED TO PRACTICE.

- 406. Who may be admitted.
- 407. No judge shall license applicant.
- 408. Must be examined in open court.
- 409. Clerk to keep register of.
- 410. Attempt to practice without, contempt of court.
- 411. Clerk and sheriff not to act as attorney, when.
- 412. Liability of, for negligence.
- 413. Failure to pay over money, liable.
- MAY BE REMOVED OR SUSPENDED FROM PRACTICE, HOW.
- 414. For what offense.
- 415. Where charge to be exhibited.
- 416. Time for hearing.
- 417. Citation to accused.

SECTION

- 418. How served.
- 419. How appearance compelled.
- 420. Indictable offense charged, proceedings.
- 421. Other than the, proceedings.
- 422. An indictable offense not prosecuted in six months, proceedings.
- 423. Record of conviction or acquittal, conclusion.
- 424. Matter charged not indictable, how tried.
- 425. Judgment on conviction.
- 426. Charges to be verified, by whom prosecuted.
- 427. Appeal allowed.
- 428. Effect of judgment.
- 429. Record of conviction for felony, effect of.
- 430. Upon conviction, license revoked, when.

HOW ADMITTED TO PRACTICE.

SECTION 406. Every male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, may, upon application, and in the manner hereinafter provided, be admitted to practice as an attorney and counselor at law in the courts of this state.

SEC. 407. No judge of the supreme, circuit or other court shall have power to license any applicant to practice law, but such power shall be exercised only by the courts of the state, by proper orders, duly recorded.

SEC. 408. Every such applicant shall be examined in open court; shall, before his admission, produce to the court by sworn petition satisfactory proof of the foregoing qualifications, and shall take an oath to support the constitution of the United States and of this state, and faithfully to discharge the duties of the office upon which he is about to enter. *Civil Code, sec. 760, as amended 1873.*

SEC. 409. It shall be the duty of the clerk of each court of record to keep a register, in which he shall register and enroll every attorney or counselor at law licensed to practice in the court of which he is clerk.

SEC. 410. Every person who shall attempt to practice law in any court of record without being licensed, sworn and registered, as required in this act, shall be deemed guilty of a contempt of court, and shall be punished as in other cases of contempt (a).

SEC. 411. No clerk of any court of record, or sheriff, while he continues to act as such, shall, under any pretense whatever, act as an attorney at law in the court of which he is clerk, or in the county in which he is sheriff.

SEC. 412. If any suit in any court of record shall be dismissed on account of the negligence of any attorney, or for his non-attendance at the court, without having a just and reasonable excuse for such absence, it shall be at the costs of the attorney, and such attorney shall be liable for all damages his client may have sustained by such dismissal, or by any other neglect of his duty (b).

SEC. 413. If any attorney, receiving money for his client, shall refuse or fail to pay the same over on demand, such attorney may be proceeded

(a) Every attorney regularly licensed and duly admitted to practice in the courts of this state possesses a general license to appear in those courts for any suitors who may retain him; but his license is not of itself an authority to appear for any particular person until he is in fact employed by or retained for him. *Cartwell v. Menifee*, 2—356. This employment may be proved by circumstances as well as by warrant of attorney. *Tally v. Reynolds*, 1—99. As a general rule, the mere appearance of an attorney for a party is deemed sufficient for the opposite party and for the court, who will look no further, and will proceed as if he had sufficient authority, and leave any party who may be injured to his action unless there appear to be fraud or collusion in the case; but a party may before judgment, upon a sufficient showing, to be judged of by the court, require the attorney representing his adversary to show his authority. To this purpose he must show to the court by affidavit facts sufficient to raise a reasonable presumption that the attorney is acting without authority. The simple allegation that a party is informed and believes that the attorney has no authority, without stating the facts upon which it is founded, is not sufficient to call for this authority. *Same cases*. Ordinarily an attorney is authorized to collect a judgment recovered for his client, and to execute in the name of his client a proper acquittance therefor. His authority continues until the judgment is collected, unless he is sooner discharged. *Conway Co. v. L. R. & F. S. Railway Co.*, 39—50; see *Saltski v. Boyd*, 32—74. As to the lien which an attorney has for his fees upon a judgment recovered for his client, see SECS. 3935—3939; *Sexton v. Pike*, 13—193; *Walker v. Scott & Mason*, *Id.*, 644.

(b) An attorney is not liable in the discharge of his official duty for claims put into his hands to collect as such attorney, unless it be shown that he has been guilty of culpable negligence in the prosecution of his suit, and thereby the plaintiff has lost his debt. *Palmer & Southmayd v. Ashley & Ringo*, 3—75; *Cummins v. McClain*, 2—402; *Sevier v. Holiday*, *Id.*, 512.

against in a summary way, on motion before the circuit court, either in the county in which he may reside or in the county in which he received the money, and the court shall render judgment against him for the amount of money received by such attorney for the use of his client, with costs, and he shall be further dealt with as the court may deem just under the provisions of this act (c).

MAY BE SUSPENDED FROM PRACTICE, HOW.

SEC. 414. Any attorney who shall be guilty of any felony or infamous crime, or improperly retaining his client's money, or of any malpractice, deceit or misdemeanor in his professional capacity, or shall be an habitual drunkard, or shall be guilty of any ungentlemanly conduct in the practice of his profession, may be removed or suspended from practice upon charges exhibited against him, and proceedings thereon had as hereinafter provided (d).

SEC. 415. The charges shall be exhibited in the county in which the offense shall have been committed, or in which the accused may reside.

SEC. 416. The court in which such charges may be exhibited shall fix a time for the hearing thereof, allowing a reasonable time to notify the accused.

SEC. 417. The clerk of the court in which such charges may be exhibited shall issue a citation, notifying the accused to appear at the time and place fixed for the hearing and answer the charges exhibited against him, to which a copy of the charges shall be attached; and such citation may be served in any county in this state.

SEC. 418. The citation shall be served in the same manner as a summons in suits at law, and the service shall be at least ten days before the return day thereof.

SEC. 419. If the accused shall fail to appear, according to the command of the citation, his appearance may be compelled by attachment, or the court may proceed *ex parte*.

SEC. 420. If the charges allege a conviction for an indictable offense, the court shall, on the production of the record of conviction, remove the person so convicted or suspend him from practice for a limited time, according to the nature of the offense, without further trial.

SEC. 421. Upon charges other than as in the preceding section, the court shall have power only to suspend the accused from practice until the facts shall be ascertained in the manner hereinafter prescribed.

SEC. 422. If the charges be for an indictable offense, and no indictment be found, or, being found, shall not be prosecuted to trial within six months, the suspension shall be discontinued, unless the delay be produced by the absence

(c) An attorney can not be held liable for money collected by him as such, unless a demand be made upon him, and he refuses to pay it over or remit it according to instructions of his client. His liability depends upon the principle of agency, and he holds money, when collected, as bailee. See cases cited at note (b); also *Taylor v. Spears*, 6—361. But it is the duty of an attorney who has collected money as such to give notice of the fact to his client within a reasonable time, and if he fails to do so he may be sued without previous demand. *Jett v. Hempstead*, 25—462. If the client has notice, he must make demand in a reasonable time. *Whitehead v. Wells*, 29—99. See note (e) to SEC. 4478.

For notice and method of proceeding under this section, see SECS. 3957—3962.

(d) The circuit court has the inherent power to disbar an attorney who makes a personal attack upon the judge for his action as such; but the attorney is entitled to notice and an opportunity to be heard in defense, the usual practice being to make charges in writing against the attorney and issue a rule upon him to show cause why he should not be disbarred. *Beene v. State*, 22—149. See note (e) *post*.

or the procurement of the accused, in which case the suspension may continue until the final decision.

SEC. 423. The record of conviction or acquittal of any indictable offense shall in all cases be conclusive evidence of the facts, and the court shall proceed thereon accordingly.

SEC. 424. When the matter charged is not indictable, the trial of the facts alleged shall be had in the court in which the charges are pending, which trial shall be by jury, or, if the accused fails to appear, or, appearing, does not require a jury, by the court.

SEC. 425. In all cases of conviction the court shall pronounce judgment of removal or suspension, according to the facts found.

SEC. 426. All charges exhibited under this act shall be verified by affidavit, and shall be prosecuted by the prosecuting attorney of the circuit in which the charges are pending.

SEC. 427. In all cases of a trial of charges, the accused may except to any decision of the court, and may prosecute an appeal to the supreme court, or writ of error, in all respects as in actions at law (e).

SEC. 428. Every judgment of removal or suspension made in pursuance of this act shall operate, while it continues in force, as a removal or suspension from practice in all the courts of this state.

SEC. 429. In all cases of conviction for felony, or other infamous crime, of any attorney at law in any other state or territory of the United States, such conviction, on the production of a copy of the record thereof, shall have the same effect as if such attorney had been convicted in this state.

SEC. 430. In all cases of conviction of any of the crimes specified in the preceding section, if the attorney shall have been licensed in this state, after such conviction his license shall be revoked in the same manner as if the conviction had been had after the granting of such license. *Rev. Stat., chap. 15, secs. 6-28.*

CHAPTER XII.

AUCTIONEERS.

SECTION

- 431. Auctioneer must be licensed.
- 432. For every sale without, penalty.
- 433. How penalty recovered.
- 434. License, how procured. Bond.
- 435. Tax upon sales.
- 436. Where auctioneer or owner buys, same.
- 437. Where part sold for whole; tax.
- 438. When free of duty.

SECTION

- 439. To whom tax to be paid.
- 440. Accounts to be rendered to county court.
- 441. Proceedings of court thereon.
- 442. Clerk to charge collector, and certify.
- 443. Clerk to indorse certificate of approval on bond, when.
- 444. Bond of auctioneer, how sued on; duty of collectors as to auctioneers.

SECTION 431. No person shall exercise the trade or business of a public auctioneer, by selling any goods or other property subject to duty under this law, without a license (a), to be issued according to law.

(e) A writ of error will lie to the judgment of the circuit court striking an attorney from the roll. *Beene v. State*, 22—149.

(a) For amount of license and how issued, see SECS. 5596 and 5795-5798. See *Henry v. State*, 26—523; *Straub & Lohman v. Gordon*, 27—625. Cities and incorporated towns may also tax auctioneers. See SEC. 759.

SEC. 432. Every person who shall exercise the trade or business of an auctioneer without a license shall forfeit, for every sale, five hundred dollars, together with the amount of duty payable by law on the property sold (b).

SEC. 433. The penalty prescribed in the last preceding section shall be recovered by action, founded on this statute, one-half to the person prosecuting for the same and the other half for the use of the school fund.

SEC. 434. Before any license shall be granted, the applicant shall give bond to the state, in any sum not less than one nor more than three thousand dollars, with one or more sufficient securities, the amount of the bond and the sufficiency of the security to be determined by the collector, with condition that he will, at each term of the county court of the county for which he is auctioneer, while he shall continue the business of auctioneer, render to the county court of his county a true and particular account, in writing, of the aggregate amount in money of all property, subject to duty by this law, sold by him at auction or at private sale, at his auction rooms—that is to say, from the date of the bond until the term of the county court next thereafter, and from thenceforth from term to term of said court, so long as he shall continue to exercise the business of an auctioneer, and shall also pay all such sums of money as shall be due to the county upon such sales to the collector of the proper county, and such bond shall be filed in the office of the county clerk.

SEC. 435. There shall be levied and paid upon all sales of property at auction, except as hereinafter excepted, a tax or duty to the county at the following rates, in proportion to the prices for which the same may be sold:

First. On all sales of personal property, one and a half per centum.

Second. On all sales of real estate, or leasehold interest in land, one-half of one per centum.

SEC. 436. In all cases where the auctioneer, or owner of any property sold, or any person employed by either of them, shall become the purchaser, such sales shall be subject to the same duties as if any other person had become the purchaser.

SEC. 437. All sales at auction of any part or parcel of any merchandise, or other property, with a design to ascertain and fix a price for the whole or any part thereof, without exposing the whole or such other part to public sale, shall be deemed a sale at auction of the whole or such part of the property the price of which was designed to be fixed by such public sale of the part, and duties shall be paid thereon accordingly.

SEC. 438. Sales of property at auction shall be free of duty in the following cases:

First. When directed by any statute of the United States.

Second. In execution of any order, judgment or decree of any court or justice of the peace of this state or court of the United States.

Third. In cases of bankruptcy or insolvency, pursuant to any law of this state or the United States.

Fourth. In consequence of any general assignment of property and effects by any debtor for the benefit of his creditors.

Fifth. Property of deceased persons sold by authority of executors or administrators.

(b) He is also liable to criminal prosecution and punishment. SEC. 1784.

Sixth. Boats, vessels, rafts, lumber and other property wrecked, stranded or found adrift on any of the waters of or adjoining this state.

Seventh. Live stock, agricultural productions, farming utensils and household and kitchen furniture sold at the residence of the owner.

Eighth. Land or leasehold interest therein sold on the premises.

SEC. 439. The auctioneer shall pay over to the collectors of the proper county all the duties imposed by this act, and for that purpose may retain the amount thereof out of the proceeds of the property sold.

SEC. 440. Auctioneers shall render their accounts in accordance with the condition of their bonds to the county court, and shall make oath before such court, to the best of their knowledge and belief, to the truth of such account rendered; in default of which such accounts shall not be deemed truly rendered according to the condition of the bond.

SEC. 441. Upon such account being rendered, the county court shall ascertain the amount of the duties to be paid by the auctioneer, and give him a certificate thereof; and the auctioneer shall pay the same to the collector within twenty days thereafter, and upon producing to the clerk the receipt of the collector for the amount a quietus shall be given therefor.

SEC. 442. The clerk of the county shall charge the collector with the amount received, and certify the same to the county treasurer without delay, and the treasurer shall charge the collector accordingly.

SEC. 443. When it shall appear to the satisfaction of the clerk of the county court that any auctioneer has fulfilled the condition of his bond and the requisitions of this act, he shall indorse a certificate thereof upon the bond, which shall be *prima facie* evidence of the performance of the condition down to that time.

SEC. 444. When any auctioneer shall fail to fulfill the condition of his bond or the requisitions of this act, the clerk shall cause him to be prosecuted on his bond; and, if judgment shall be rendered against him, his license shall thereby be vacated, and he shall be incapable of receiving a new license unless by the express order of the county court. It shall be the duty of the collectors in the several counties to collect the duties imposed by this act, and to prosecute for all fines and forfeitures which may be incurred under it. *Rev. Stat., chap. 17.*

CHAPTER XIII.

BASTARDY.

SECTION

445. In cases of, county court has exclusive original jurisdiction.
 446. On complaint of woman, warrant to issue; bail, etc.
 447. Affidavit, warrant, etc., when and where filed.
 448. If child not born when accused appears, case to be continued.
 449. Trial, by court, unless accused demands a jury.
 450. Judgment, for what rendered; bond required.
 451. Father to be committed on failure to enter into bond.

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452. Judgment may be revived against executor or administrator.
 453. Appeal to circuit court; duty of clerk of county court.
 454. Prosecuting attorney to conduct prosecution on appeal.
 455. Circuit court to try case *de novo*.
 456. Mother a competent witness; her dying declarations, when admitted.
 457. County judge to summon mother to discover father, when; proceedings on such summons.
 458. Fees of county judge and other officers.

SECTION 445. The county court shall have exclusive original jurisdiction in all cases and matters relating to bastardy (*). *Act Nov. 29, 1875, sec. 1.*

SEC. 446. On complaint made to the county court by any woman resident of the county, who shall have been delivered of a bastard child, or who may be pregnant with a child which if born alive may be a bastard, charging on oath any person with being the father of such child, the judge of such court may order the clerk to issue a warrant, or may issue such warrant himself, in the name of the state against the accused person, to the sheriff, coroner or any constable of the county, commanding him forthwith to arrest and bring the accused person before the court to answer such charge, and if complaint in form as aforesaid be made before the judge in vacation of the court he shall issue his warrant against the accused, directed as aforesaid, commanding the officer to have the person accused before the judge at any time that may be fixed by the judge in said warrant for the trial; provided, that no such accused person shall be forced into trial until after the expiration of twenty-four hours after his arrest; and the judge or clerk issuing such warrant shall indorse on such warrant the amount of bail to be taken and approved by the officer executing said warrant, conditioned that the defendant will make his personal appearance at the time set for trial and answer such charge, and not depart without leave, and on the giving of such bond the accused shall be discharged (a). *Ib., sec. 2, as amended by Act March 17, 1879.*

SEC. 447. The affidavit, warrant and all papers in the case shall be returned to and filed in the office of the county clerk, on or before the first day of the next term. *Ib., sec. 3.*

SEC. 448. If the child is not born when the accused appears before the court or judge, the case shall be continued until the child is born, and then the case shall be proceeded with, and the defendant shall remain bound on his bail bond.

(*) See art. VII, sec. 28, Const.

(a) See *Jackson v. State*, 29—62.

SEC. 449. When the case is ready for trial, if the accused denies being the father of such child, the court or judge shall hear the evidence and decide the case as other issues at law, but, if a jury is demanded by the accused, the court shall order a jury to be summoned, who shall be elected, empanelled and sworn to try the issue joined and a true verdict render according to evidence, as in other cases at law.

SEC. 450. If it is found by the court or the verdict of a jury that the accused is the father of the child, the court shall render judgment against him for the lying-in expenses in favor of the mother, or person who incurred the same, if required or claimed, for a sum not less than five dollars nor more than fifteen dollars; and if the same shall not be paid upon the rendition of such judgment, together with all costs which may be adjudged against him in said case, then the court shall have the power to commit the accused person to jail until the same shall be paid, with all costs; and, if claimed by the mother, the court or judge shall give judgment for a monthly sum of not less than one dollar nor more than three dollars per month, for every month from the birth of the child until it shall attain the age of seven years, and shall further order that the father enter into bond to the State of Arkansas in the penal sum of three hundred dollars, with good and sufficient security, conditioned to be void if such person or his executors or administrators shall indemnify each county in this state from all costs and expenses for the maintenance or otherwise of such child while under the age of seven years, and for the payment of the monthly dues that may be adjudged as aforesaid, which bond shall be approved by the judge and an entry made on the record of its conditions and the securities thereon.

SEC. 451. If such person shall refuse or neglect to enter into bond with security as above provided, the county judge shall commit him to the jail of the county, there to remain until he shall comply with such order or until he shall be otherwise discharged according to law. *Ib.*, secs. 4 and 5, as amended by Act March 17, 1879.

SEC. 452. The judgment may be revived against the executor or administrator of the person against whom the same was rendered.

SEC. 453. An appeal will lie from a judgment of the county court to the circuit court in all cases of bastardy, as in cases of appeal from judgments of justices of the peace to circuit courts; but no appeal shall be granted until affidavit and appeal bond is filed (*). When the appeal is granted, the clerk of the county court shall make, certify and transmit a certified copy of all the papers, judgment and orders of the county court to the circuit clerk, who shall give receipt for such transcript, and also enter the same on the docket of the circuit court.

SEC. 454. The attorney prosecuting for the circuit shall conduct the suit on behalf of the state on all appeals to the circuit court in cases of bastardy.

SEC. 455. The circuit court shall hear the case *de novo*, and make such orders and render such judgment on appeal as the law and evidence require.

SEC. 456. The mother shall be a competent witness in all cases of bastardy, unless she be legally incompetent in any case (b); and if she be dead at the

(*) But see SEC. 1436.

(b) See *Barnett v. State*, 16—530.

time of the trial, her declarations, made in her travail and proved to be her dying declarations, shall be evidence.

SEC. 457. The county judge, upon his personal knowledge or upon information that a woman has been delivered of a bastard child, shall issue his warrant, or cause it to be done, and bring such woman before the county court, and require her to disclose or discover to the court, under oath, the father of such child, or give security, in like manner and sum as hereinbefore required in case of the father, to indemnify each county of this state from all costs and expenses for maintenance, or otherwise, on account of such child while under the age of seven years; and if she will not discover the father of such child, or give security, the court shall commit her to the county jail until she discovers the father or gives security. *Ib.*, *secs.* 6-11.

SEC. 458. The judge of the county court shall be allowed such fees in all cases of bastardy as were allowed to justices of the peace under the law when justices of the peace had jurisdiction of bastardy cases, and the other officers shall be allowed such fees as are by law allowed to sheriffs, coroners, constables and clerks in criminal cases. *Act March 17, 1879, sec. 4.*

CHAPTER XIV.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

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BILLS OF EXCHANGE.

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PROMISSORY NOTES, ETC.

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BILLS OF EXCHANGE.

SECTION 459. No person within this state shall be charged as an acceptor of any bill of exchange, unless his acceptance shall be in writing.

SEC. 460. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

SEC. 461. An unconditional promise in writing to accept a bill before it is drawn shall be deemed an actual acceptance in favor of every person who, in faith thereof, shall have received the bill for a valuable consideration.

SEC. 462. Every holder of a bill, on presenting the same for acceptance, may require the acceptance to be written on the bill; and a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

SEC. 463. Nothing in the preceding sections shall be so construed as to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise on his refusal to accept such bill.

SEC. 464. Every person upon whom a bill of exchange is drawn, and to whom the same may be delivered for acceptance, who shall destroy such bill, or refuse within twenty-four hours after such delivery, or within such time as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same. *Rev. Stat., chap. 20, secs. 1-6.*

SEC. 465. In all cases where bills of exchange, drafts or promissory notes shall become due and payable on Sunday, Christmas, or on the fourth day of July, the same shall be payable on the day next preceding such Sunday, Christmas and fourth day of July, and, in case of non-payment, may be noted and protested on the next preceding day: *Provided*, That it shall not be necessary for the holder or holders of such bills of exchange, drafts or promissory notes to give notice of the dishonor thereof until the next day after such Sunday, Christmas or fourth day of July, and every such notice so given shall be valid and effectual to all intents and purposes. *Act Dec. 16, 1838.*

SEC. 466. Every bill of exchange, expressed to be for value received, drawn or negotiated within this state, payable after date to order or bearer, which shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, shall be subject to damages in the following cases (a):

First. If the bill shall have been drawn on any person at any place within this state, at the rate of two per centum on the principal sum specified in the bill.

Second. If the bill shall have been drawn on any person, and payable in any of the States of Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois and Missouri, or any point on the Ohio River, at the rate of four per centum on the principal sum in such bill specified.

Third. If the bill shall have been drawn on any person, and payable at any place within the limits of the United States not hereinbefore expressed, at the rate of five per centum on the principal sum specified in the bill.

Fourth. If the bill shall have been drawn on any person, and payable at any port or place beyond the limits of the United States, at the rate of ten per centum on the sum specified in the bill.

SEC. 467. If any bill of exchange, expressed to be for value received, and made payable to order or bearer, shall be drawn on any person at any place within this state, and accepted and protested for non-payment, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases:

First. If the bill be drawn by any person, at any place within this state, at the rate of two per centum on the principal sum therein specified.

(a) See *Craig v. Price*, 23—633.

Second. If the bill be drawn by any person at any place without this state, but within the limits of the United States, at the rate of six per centum on the sum therein specified.

Third. If the bill be drawn by any person at any place without the limits of the United States, at the rate of ten per centum on the sum therein specified.

SEC. 468. In addition to the damages allowed in the two preceding sections to the holder of any bill of exchange protested for non-payment or non-acceptance, he shall be entitled to costs of protest and interest at the rate of ten per centum per annum on the amount specified in the bill, from the date of the protest until the amount of such bill shall be paid.

SEC. 469. The holder of any bill of exchange protested for non-acceptance or non-payment, when such protest shall have been properly made before any duly qualified notary public, shall have his action at law against the drawer, indorser and acceptor, or either of them, for the recovery of the amount of such bill so protested, together with all the damages, interest and costs that may have accrued thereon according to the provisions of this act.

SEC. 470. The damages allowed by this act shall be recovered only by the holder of the bill, who shall have purchased or acquired some interest in the same for a valuable consideration.

SEC. 471. The term "bill of exchange," as used in this act, shall be so construed as to include all drafts or orders drawn by one person on another for the payment of a sum of money specified therein (b).

SEC. 472. The remedy on bills of exchange, foreign and inland, and on promissory notes shall be governed by the rules of the law merchant as to days of grace, protest and notice (c). *Rev. Stat., chap. 20.*

PROMISSORY NOTES, ETC.

SEC. 473. All bonds, bills, notes, agreements and contracts, in writing, for the payment of money or property, or for both money and property, shall be assignable (d). *Rev. Stat., chap. 11, sec. 1.*

SEC. 474. The lien or equity held or possessed by the vendor of real estate, when the same is expressed upon or appears from the face of the deed or conveyance, shall inure to the benefit of the assignee of the note or obligation

(b) An order was in the following form: "Please pay to — the sum of \$550, and the same will be credited on your joint note to me." Held that this was a bill of exchange payable on demand, and that it was the duty of the payee to present it in due time, and, if dishonored, to give due notice to the drawer. *Adams v. Boyd*, 33—33. See also *Minehart v. Handlin*, 37—276.

(c) The certificate of a notary is evidence of presentment, and also of notice of non-payment to indorser, when he gives such notice and certifies to that fact. SECS. 2831, 2832.

When the parties to a bill of exchange reside at different places, notice of its dishonor should be deposited in the post-office in time to go by the mail of the day after the dishonor, if the mail is not closed before early and convenient business hours of that day, in which case it must be sent by the next mail thereafter; or it may be sent by messenger or given personally, but must reach the party at furthest on the same day it would have reached him in due course of mail. *Minehart v. Handlin*, 37—276.

When the drawer of a bill of exchange promises to furnish the accommodation acceptor the means to meet the paper at maturity, and fails to do so, he is not entitled to notice of non-payment. *Harrison v. Trader*, 29—85.

The indorser of a paid bill or note is liable on his indorsement without notice or demand. *Airy v. Nelson & Hanks*, 39—43.

(d) The maker of a note, when sued by an assignee, can not question the consideration for the assignment. *Geisreiter v. Sevier*, 33—522.

given for the purchase money of such real estate, and may be enforced by such assignee (e). *Civil Code, sec. 28, as amended April 24, 1873.*

SEC. 475. Nothing contained in this act shall change the nature of the defense, or prevent the allowance of discounts or off-sets, either in law or equity, that any defendant may have against the original assignor previous to the assignment, or against the plaintiff or assignee after the assignment (f). *Rev. Stat., chap. 11, sec. 3.*

SEC. 476. Nothing in the preceding section shall apply to a bill of exchange or negotiable promissory note transferred in good faith and for value before maturity; but such instruments shall be governed in all respects by the rules of the law merchant concerning commercial and negotiable paper (g). *Act April 10, 1869, and Civil Code, sec. 26, as amended April 24, 1873.*

SEC. 477. The assignee of any instrument in writing made assignable by law, on bringing suit thereon, shall not be required to prove said assignment, unless the defendant shall annex to his answer an affidavit denying such assignment, and alleging that he verily believes that one or more of the assignments on such instrument was forged.

SEC. 478. It shall not be necessary for any assignee to set forth the consideration of any of the assignments on any such assigned paper.

SEC. 479. All assignments of any instrument of writing shall bear date of the true day upon which such assignment was made (h).

SEC. 480. All blank assignments shall be taken to have been made on such day as shall be most to the advantage of the defendant (i).

SEC. 481. No assignor shall be able to release any part of the consideration of the instrument by him assigned after the assignment thereof.

SEC. 482. All indorsers or assignors of any instrument in writing assignable by law, for the payment of money alone, on receiving due notice of the non-payment or protest of any such indorsed or assigned instrument in writing, shall be equally liable with the original maker, obligor or payee of such instrument, and may be sued for the same at the same time with the maker, obligee or payee thereof, or may be sued separately (j).

SEC. 483. The plaintiff in such several actions shall collect only the amount of his demand, with interest due thereon, and the costs on only one of such actions. *Rev. Stat., chap. 11, secs. 5-10.*

(e) See *Campbell v. Rankin*, 28—407; *Richardson & May v. Hamlett*, 33—237; *Stephens v. Anthony*, 37—571; *Tatierferro v. Barnett*, *Id.*, 511.

(f) See *Tatum v. Kelley*, 25—209; *Ruddell v. Landers*, *Id.*, 238; *Sayre v. Thompson*, 28—336.

(g) See *Sayre v. Thompson*, 28—338. A promissory note was executed on Sunday, but bore date the following day, and was indorsed before maturity, for value; held that the indorsee was not affected by the original invalidity of the instrument. *Triebler v. Commercial Bank of St. Louis*, 31—128; *Cleudenuin v. Southerland*, *Id.*, 20; *Nisbett v. Brown & Norton*, 30—590; *Overton v. Mathevs*, 35—146.

The assignee of a note after maturity takes it subject to the same defenses which the maker has against the assignor. *Sorrells v. McHenry*, 38—127; *Williamson v. Doby*, 36—692.

(h) See *Ruddell v. Landers*, 25—238.

(i) This only applies in the absence of evidence as to the date of the assignment. *Triebler v. Commercial Bank of St. Louis*, 31—128.

(j) See SECS. 4943, 4944, 3900, 5165-5167. A written promise to pay county scrip is not a promissory note, but a special agreement to deliver property, and the assignor of such instrument is not liable as an indorser of a note for the payment of money, but only after the maker has been prosecuted to insolvency, or is shown to be so notoriously insolvent as to render a suit against him useless. *Jones v. State*, 40—344.

CHAPTER XV.

BOARD OF HEALTH.

SECTION

484. Governor to appoint six health commissioners; qualifications.
485. Official oath; certificates of appointment; term of office; vacancies.
486. Board of health, when to meet; election of president and secretary; powers of secretary.
487. By-laws of board; committees.
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489. Duty and powers of board; reports and publications.

SECTION

490. Registration of births, marriages and deaths; registration of vital statistics, etc.
491. Governor may require board to examine into questions affecting security of life; report of examination, and power of governor.
492. Representatives of local boards.
493. Appointments to do sanitary service; inspections.
494. Annual reports to governor, on vital statistics.
495. Secretary's salary.

SECTION 484. Within thirty days after the passage of this act the governor shall appoint six state commissioners of health, a majority of whom shall be graduates of legally constituted medical colleges, and of not less than seven years' practice of their profession in the State of Arkansas. The acceptance of an appointment on the state board shall not, in any way, invalidate or affect the official position of any person in his local board, and shall not be construed to vacate his office in such local board.

SEC. 485. The said commissioners, so appointed, shall take the oath of office prescribed by the constitution for state officers, and receive from the secretary of state certificates of their appointments. They shall hold their office for two years, unless discharged for good cause. When a vacancy occurs the governor shall fill such vacancy as soon as the fact comes to his knowledge.

SEC. 486. The state board of health shall meet at least once in every three months, and as much oftener as they shall deem necessary. No member of the board, except the secretary, shall receive any pay, but the actual traveling expenses of the members and officers of said board while engaged in their duties shall be allowed and paid out of the appropriation made for its support. They shall elect annually one member of the board to be president. They shall also elect, from their number or otherwise, a person of skill and experience in public health duties and sanitary science, to be the secretary and executive officer of said board, who shall have all the powers and privileges of a member of the board, except in regard to voting upon matters relating to his own office and duties as secretary, and he shall hold said office for two years. But he may be removed for cause, after a full hearing by the board, a majority of members voting therefor.

SEC. 487. The state board of health may adopt by-laws regulating the transaction of its business, and provide therein for the appointment of committees, to whom it shall delegate authority and power for the work committed to them, and it may also adopt and use an official seal. Four members may constitute a quorum for the transaction of business.

SEC. 488. The secretary shall keep a record of the acts and proceedings of the board, perform and superintend the work prescribed in this act and such other duties as the board may order.

SEC. 489. Said board shall take cognizance of the interests of health and life among the people of the state. They shall make inquiries in respect to the causes of disease, and especially epidemics, and investigate the sources of mortality, and the effects of localities, employments and other conditions upon the public health. It shall be the duty of said board to obtain, collect and preserve such information relating to deaths, diseases and health as may be useful in the discharge of its duties and contribute to the promotion of health or the security of life in the state. And it shall be the duty of all health officers and boards of health in the state to communicate to said state board of health copies of all their reports and publications; also such sanitary information as may be useful.

SEC. 490. It shall be the duty of the state board of health to have the general supervision of the state system of registration of births, marriages and deaths, and also the registration of prevalent diseases. Said board shall prepare the necessary methods and forms for obtaining and preserving such records, and to insure the faithful registration of the same in the several counties. The said board of health shall recommend such forms and amendments of law as shall be deemed necessary for the thorough organization and efficiency of the registration of vital statistics throughout the state. The secretary of said state board of health shall be the superintendent of registration of vital statistics of the state, as supervised by the said board. The clerical duties and safe-keeping of the bureau of vital statistics thus created shall be provided for by the secretary of state, who shall also provide and furnish such apartment and stationery as said board shall require in the discharge of its duties. And the state board of health shall also prepare the necessary methods and forms and prescribe the rules regulating the issue and use of transfer permits, with the proper coupons attached thereto, to be issued by local organized boards of health, for the transportation of the dead bodies of persons which are to be carried for burial beyond the limits of the counties where the death occurred, and in all cases the said state board of health shall require the coupons to be attached to such permits, to be detached and preserved by every common carrier, or the person in charge of any vessel, railroad train or vehicle to whom such dead bodies shall be delivered for transportation. Any violation of such rules and regulations shall be a misdemeanor.

SEC. 491. At any time the governor may require the state board of health to examine into nuisances or questions affecting the security of life and health in any locality, and in such case the said board shall have all necessary powers to make such examinations, and it shall report the results thereof to the governor within the limits of time which he shall prescribe for such examination and report. The report of such examination, when approved by the governor, shall be filed in the office of the secretary of state, and the governor may, in relation to the matters or things found and certified by the state board of health to be a nuisance, declare them to be public nuisances, and order them to be changed as he shall direct, or abated and removed. Any violation of such an order shall be held and punished as a misdemeanor, and thereafter the governor may, by his order in writing, certified under his official seal, directed to the officers of the county in which the said nuisance shall be situated, require the district attorney, the sheriff and the other officers

of every such county to take all necessary measures to execute and to have obeyed the order of the governor.

SEC. 492. At any time, at the request of the state board of health, or whenever the governor shall, as hereinbefore provided, have directed an examination and report to be made by the state board of health into any alleged nuisance, any board of health of any city of the state may appoint and select any one of its officers as its representative during such examination of any nuisance, and such representative officer shall have a seat at and be entitled to take part in all the deliberations of the state board of health during such investigation, but without the right to vote.

SEC. 493. Said board may from time to time engage suitable persons to render sanitary service, and to make or supervise practical and scientific investigations and examinations requiring expert skill, and to prepare plans, and report relative thereto. And it is hereby made the duty of all officers and agents having the control, charge or custody of any public structure, work, ground or erection, or of any plan, description, outlines, drawings or charts thereof or relating thereto, made, kept or controlled under any public authority, to permit and facilitate the examination and inspection; and the making of copies of the same by any officer or person by said board authorized, and the members of said board and such other officers or persons as may at any time be by said board authorized may, without fee or hindrance, enter, examine and survey all grounds, erections, vehicles, structures, apartments, buildings and plans whereby the public health may be promoted or in anywise preserved.

SEC. 494. It shall be the duty of said board, on or before the first of December in each year, to make a report in writing to the governor upon the vital statistics and the sanitary condition and prospects of the state; and such report shall set forth the action of said board and of its officers and agents and the names thereof for the past year, and may contain other useful information, and shall suggest any further or additional legislation, action or precautions deemed proper for the public health, or for the better protection of life and health. And the annual report of said board shall also contain a detailed statement of all money paid out by or on account of said board, and a detailed statement of the manner of its expenditure during the year last past.

SEC. 495. The salary of the secretary of the board of health shall be one thousand dollars per annum. *Act March 23, 1881.*

CHAPTER XVI.

BRIDGES AND TURNPIKES.

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	BRIDGES ON PUBLIC ROADS.		
497.	How classified.	504.	When county courts may grant privileges to construct.
498.	To be built as in this chapter provided.	505.	County courts to fix rates of toll and compel repairs.
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500.	Bond of contractor; report of commissioners; appropriation to pay for bridge.	507.	Second grant of same privileges, forbidden.
501.	Second-class bridges, how to be built.	508.	Rates of toll, how to be posted.
502.	Third class, how built.	509.	Penalty for demanding illegal toll.

COUNTY BRIDGES (*).

SECTION 496. When a bridge is necessary over any stream, the county court is authorized and empowered to contract for the building and keeping the same in repair; and, when it shall be necessary over any stream which divides one county from another, the county court of each county shall join in the agreement for building and keeping the same in repair, and the cost thereof shall be defrayed by both counties, in proportion to the assessed value of real and personal property in each (a). *Act April 3, 1873, sec. 16.*

BRIDGES ON PUBLIC ROADS.

SEC. 497. The bridges on the public roads of this state shall be divided into three classes, to wit: Bridges over sixty feet in length, exclusive of abutments, shall be bridges of the first class; bridges of not less than thirty nor more than sixty feet in length, exclusive of abutments, shall comprise the second class; and all bridges less than thirty feet in length shall comprise the third class.

SEC. 498. Bridges of the first, second and third classes shall be built in the manner hereinafter provided, and it shall be left to the discretion of the county court to determine when bridges of the length of sixty feet and under shall be built at the cost of the county.

SEC. 499. Bridges of the first class shall be built at the expense of the county in which they are situated, and it shall be the duty of the county court, when it has been determined to build any bridge of the first class, to appoint a commission of three competent persons, who shall be property-holders of the county, whose duty it shall be to make a personal examination of the place

(*) All contracts for erecting or repairing public bridges in any county, or for materials therefor, shall be given to the lowest responsible bidder under such regulations as may be provided by law. *Art. XIX, sec. 16, Const.*

(a) But see SECS. 497-502.

where the bridge is needed, and report to the court, with the plans and specifications best adapted to the ground where the bridge is to be erected. Then, if it is determined by the court to build the bridge, and the plans and specifications have been adopted, it shall be the duty of the court to give notice by posting three notices at the court-house and one at each precinct in the county, setting forth the plans and specifications of the bridge, with the place where it is to be built and the time when it is to be completed. The contract for the same shall be let at public outcry at the court-house door to the lowest and best bidder.

SEC. 500. The person obtaining the contract shall proceed at once to give bond in the amount of his bid, with good and sufficient security, to be approved by the court, which bond shall set forth the time in which the bridge shall be completed. When the bridge has been finished, or the time in which it was to be completed has expired, the court shall instruct the commissioners who reported the plans of the bridge to make personal examination and report, and if it shall appear that the bridge has been built in accordance with the plans and in the time agreed upon, the court shall proceed to make an appropriation to pay for the same; but if it shall appear that the bridge has not been built according to the plans and in the time specified, the bond of the contractor shall be declared forfeited, and the court shall proceed to collect the same: *Provided*, That if it shall appear that the contractor has been delayed in the performance of his contract by providential hindrances, the court may allow him a reasonable length of time in which to complete the same.

SEC. 501. It shall be the duty of the overseer of roads to cause to be built all bridges of the second class in the following manner, to wit: When it becomes necessary to build a bridge of the second class in any road district, the overseer of such district shall warn the hands in a manner provided by law for warning road hands, with the necessary tools, and shall proceed to build the bridge on such plans as he deems best adapted to the place, and the county court shall appropriate money sufficient to pay for the lumber to floor and banister the same: *Provided*, That when any bridge of the second class is ordered built at the expense of the county, the work shall be done and the same erected in all respects as is provided for in section 499.

SEC. 502. All bridges of the third class shall be built under the direction of the overseer of the roads on such plan as he may deem best adapted to the place where needed, without expense to the county, except that the county shall furnish plank for all bridges over ten feet in length.

SEC. 503. All male inhabitants of this state, between the ages of eighteen and forty-five years, shall be subject to be warned to work on the bridges of the second and third class, and on refusal shall be subject to all the fines attached to the general road law. *Act March 6, 1875.*

TOLL-BRIDGES AND TURNPIKES (*).

SEC. 504. The several county courts, through whose counties runs any water course, lake, bay or swamp which may be too burthensome to bridge and keep in repair by the inhabitants thereof, are hereby fully and exclusively empowered to grant privileges to persons to build toll-bridges over, or turnpikes

(*) As to construction of toll-bridges by railroad companies, see SECS. 5546-5549.

or causeways along the same, or through any overflowed or wet land, whenever the interest of the county or of the traveling public shall, in their discretion, demand such improvements.

SEC. 505. The county courts shall have a general superintending control over such bridges and turnpikes, and they are hereby required to fix the rate of toll for crossing any bridge, causeway or turnpike which may be built under the provisions of this act, and to compel the same to be kept in good repair at all times.

SEC. 506. All privileges granted by the county courts by virtue of this act to any person shall inure, not only to the benefit of such person to whom the same shall have been granted, but also to his heirs, assigns, and to the same extent and for the full length of time as may originally have been granted in the first instance.

SEC. 507. No county court, after conferring the privileges of this act upon any person, shall again have power to confer the same, or like privileges, upon any other person to the injury of him upon whom such privileges were first conferred.

SEC. 508. Every keeper of any toll-bridge, causeway or turnpike in this state shall keep constantly posted up in some conspicuous place at such bridge, causeway or turnpike the rates, in large and plain letters and figures, which shall have been allowed by the county court.

SEC. 509. Any person who shall be convicted of asking or demanding more of any person or persons for crossing such toll-bridge, causeway or turnpike than has been allowed him by the county court shall be fined in any sum not more than fifty dollars for each separate offense. *Act March 6, 1875.*

CHAPTER XVII.

CHANGE TICKETS, BANK NOTES, Etc.

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- 510. Holder or owner of, may sue on.
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- 516. Corporation not to issue.
- 517. Persons signing to be responsible.
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- 519. No bill, note, etc., under twenty dollars to be put in circulation.
- 520. Penalty for issuing, etc.

SECTION 510. The holder or owner of any change ticket, bill or small note, issued for the purpose of change or otherwise, shall have the right to sue the drawer, issuer or indorser of such change ticket or tickets, bill or bills, or small note or notes, before any justice of the peace in this state.

SEC. 511. The justice of the peace before whom any suit may be brought under the provisions of this act shall, in all cases where he is satisfied that the defendant in such suit did draw, issue, sign or indorse the change ticket, bill or

small note sued on, and that the same is not paid, forthwith give judgment for the plaintiff for the amount of such change ticket, bill or note sued on, and shall forthwith grant the plaintiff an execution on the judgment, if the plaintiff require the execution.

SEC. 512. It shall not be any bar to any plaintiff obtaining a judgment on any change ticket, bill or small note on account of any conditions specified or set forth in any change ticket, bill or note sued on that payment will be made when the sum of five dollars is presented; but the justice shall give judgment for the amount of the change ticket, bill or small note sued on (a). *Rev. Stat., chap. 25.*

SEC. 513. No person, unauthorized by law, shall intentionally create or put in circulation, as a circulating medium, any note, bill, bond, check or ticket, purporting that any money or bank notes will be paid to the receiver, holder or bearer, or that it will be received in payment of debts, or to be used as a currency or medium of trade in lieu of money.

SEC. 514. If any person shall issue, put into circulation, sign, countersign or indorse any such note, bill, bond, check or ticket, the person so offending shall be indicted and, being thereof convicted, shall be fined not less than fifty nor more than three hundred dollars, and be imprisoned not exceeding twelve months.

SEC. 515. If any person or company vend, pass, receive or offer in payment any such note, bill, bond, check or ticket, the party so offending shall forfeit the sum of fifty dollars, to be recovered by action, with costs, to the use of any person who will sue for the same. *Rev. Stat., chap. 119.*

SEC. 516. It shall not be lawful for any city, town or corporation whatever, within the State of Arkansas, to issue small bills or notes, commonly denominated change tickets or shinplasters, unless specially authorized by law (b).

SEC. 517. All persons, officers of such city, town or corporation, or others, whose names shall be affixed to any such bills, notes, change tickets or shinplasters issued in violation of this act, shall be individually responsible for the same (c).

SEC. 518. The holders of any such bill, note, change ticket or shinplaster issued in violation of this act may sue for, and recover in gold and silver, the amount for which they purport to be payable, from the individuals whose names shall be affixed thereto, before any justice of the peace residing in the city, town or county in which the same may have been issued. *Act Dec. 17, 1838.*

SEC. 519. It shall not be lawful for any person to put in circulation, receive, pass, sign, countersign or indorse any bill, bond, note, check or ticket of a less denomination than twenty dollars, with an intention that the same shall pass as currency; and no person or company shall, within this state, receive, vend, pass or offer in payment any bank note, bill, bond, check or ticket of a denomination less than twenty dollars, and intended to be used in circulation as currency, whether the same was first issued in this state or not: *Provided, That*

(a) So much of this statute as denied to a party sued on a change ticket any stay of execution, appeal, certiorari, writ of error or injunction is unconstitutional and void. *Anthony, ex parte*, 5—358; *Pope v. Ashley*, 13—268.

(b) See *Jones v. City of Little Rock*, 25—301.

(c) See *Lindsay v. Rottaken*, 22—620.

nothing herein contained shall be so construed as to prevent the circulation of negotiable paper or county warrants.

SEC. 520. A violation of any of the provisions of this act shall be a misdemeanor, and the party offending, upon conviction, shall be fined any sum not less than fifty nor more than five hundred dollars for each and every offense. *Act Feb. 8, 1859.*

CHAPTER XVIII.

CIVIL RIGHTS.

SECTION

- 521. Public carriers not to refuse transportation, when.
- 522. Penalty.
- 523. Hotel-keeper, etc., not to refuse accommodations, etc., when.
- 524. Penalty.
- 525. Licensed saloon, not, when.
- 526. Penalty.
- 527. Licensed place of public amusement, not, when.
- 528. Penalty.

SECTION

- 529. Superintendent of public schools, etc., not, when.
- 530. Penalty.
- 531. Accessories, how punished.
- 532. No rules to be made by persons in authority not to affect all alike.
- 533. Civil action for damages, against whom.
- 534. Party aggrieved to recover attorney's fees.
- 535. What officers required to institute proceedings under this act.
- 536. Penalty for failure.

SECTION 521. It shall be unlawful for any person or persons owning, managing, operating, running or representing as agent for any railroad, steamboat, stage-coach or any other conveyance operated, managed or run in the public transportation or conveyance of persons or property in this state to refuse or neglect to provide for and to furnish any person or persons applying for the same with the same accommodations as are furnished other persons by such person or persons owning, managing, operating, running or representing as agent for any railroad, steamboat, stage-coach or any other conveyance managed or run in the public transportation of persons or property in this state, upon the person applying for such accommodations, paying or tendering to said person or persons owning, managing, operating, running or representing as agent for any railroad, steamboat, stage-coach or any other conveyance operated, managed or run in the public transportation or conveyance of persons or property in this state a sum of money equal to the amount charged and actually paid for like or similar accommodations by any other person.

SEC. 522. Any person or persons who shall violate any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense in any sum not less than two hundred nor more than one thousand dollars, or by confinement in the common jail of the county for not less than three nor more than twelve months, or both, at the discretion of the court.

SEC. 523. It shall be unlawful for any owner, lessee, keeper, manager or attache of any public house of entertainment, inn, hotel or restaurant to refuse, fail or neglect to furnish to any person or persons who shall apply for

the same any accommodation, meal, board, lodging, room, or other accommodation, the same as are furnished by such owner, lessee, keeper, manager or attache to other persons, upon the person so applying paying or offering to pay a sum of money equal to the amount charged and actually paid by other persons for like or similar accommodations, meals, board, lodging, rooms or other accommodations.

SEC. 524. Any such owner, lessee, keeper, manager or attache who shall refuse, fail or neglect to furnish such meal, board, lodging, room or other accommodations, as herein specified, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than five hundred dollars.

SEC. 525. It shall be unlawful for any owner, keeper or attache of a licensed saloon, grocery, dram-shop or other place where ardent, malt, vinous or spirituous liquors are sold by retail, to refuse to sell to any person or persons, on account of race or color, a drink of any ardent, malt, vinous or spirituous liquors, in the same manner, at the same place and of the same quality that such owner, keeper or attache generally sells to other persons, for the same amount of money paid or tendered by the person applying for such drink.

SEC. 526. Any such owner, keeper or attache who shall refuse to sell to any person or persons a drink of ardent, malt, vinous or spirituous liquors, as provided in the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense in any sum not less than twenty-five dollars nor more than one hundred dollars.

SEC. 527. It shall be unlawful for any owner, lessee, keeper, manager or attache of a licensed place of public amusement to refuse, fail or neglect to admit any person or persons, on account of race or color, applying to be admitted to a full and free enjoyment of the same, or to refuse, fail or neglect to provide the same accommodations for every person so admitted, upon the person or persons so applying paying or offering to pay therefor a sum of money equal to the amount paid by other persons for the same accommodations.

SEC. 528. Any owner, lessee, keeper, manager or attache who shall refuse, fail or neglect to admit, or provide for every person, as provided in the preceding section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars.

SEC. 529. It shall be unlawful for any superintendent, commissioner, director, teacher or any other officer or board of officers whomsoever, who are authorized, charged, empowered, directed or compelled by law to provide for the organization, support or maintenance of any public school or benevolent institution, supported in whole or in part by general taxation, to refuse, fail or neglect to provide equal and like accommodations and advantages for the education of each and every youth of school age in their respective counties, townships, districts, wards or institutions.

SEC. 530. Every superintendent, commissioner, director, teacher or other officer, or any member of a school board, who shall so refuse, fail or neglect to provide equal and like accommodations and advantages for youths of school age, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for each offense be fined in any sum not less than one hundred dollars nor more than five hundred dollars.

SEC. 531. Any person who shall aid, counsel, advise or abet in the violation of any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense in any sum not less than fifty dollars nor more than five hundred dollars.

SEC. 532. No person or persons transacting or carrying on any business of the nature mentioned in the foregoing sections, nor any school officer or teacher hereinbefore mentioned, shall make any rule or rules for the government or conduct of such business, schools or institutions hereinbefore mentioned, affecting persons applying for accommodation to such person or persons, which shall not affect all persons alike, without regard to race or color.

SEC. 533. Any person or persons violating any of the provisions of this act, or aiding, abetting or inciting other person or persons to such violation, shall, for every such violation, in addition to the punishment provided for in the foregoing sections, be liable for a civil action for damages, at the suit of the person aggrieved by such violation, to be recovered with full costs.

SEC. 534. The person aggrieved shall be entitled to recover from the defendant his reasonable attorney's fees, to be assessed as costs.

SEC. 535. Prosecuting attorneys, sheriffs, coroners, justices of the peace and constables of this state are hereby authorized and required to institute proceedings, on behalf of the state, whenever they become cognizant of a violation of this act occurring within their jurisdiction.

SEC. 536. Any of the aforesaid officers who are personally cognizant of such offense, or to whom complaints shall be made, who shall fail or refuse to prosecute the proceedings herein required, shall be deemed guilty of a misdemeanor in office, and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars and the costs of prosecution, and in default of payment shall be imprisoned in the common jail of the county in which such proceedings are had for the term of six months, or until the fine and costs are paid. *Act Feb. 25, 1873.*

CHAPTER XIX.

CLERK OF THE CIRCUIT COURT.

SECTION

537. Election of; term of office; *ex officio* clerk, etc.
 538. Master or commissioner of circuit court; powers as such.
 539. Court may appoint master in special cases.
 540. Bond and oath of office; bond, where recorded and filed.
 541. New bond required, when.
 542. Office deemed vacant, when.
 543. Bonds of clerks deposited with secretary of state, to be recorded, etc.
 544. May appoint deputy; powers of.
 545. Appointment to be in writing; how approved; where filed.
- DUTIES OF.
546. Shall preserve seal and property.
 547. Shall keep office at county seat.
 548. May remove records, when.
 549. Shall record and index proceedings.

SECTION

550. Shall indorse on papers filed, what.
 551. Shall enter upon docket, what.
 552. May administer oaths.
 553. Shall prepare bonds.
 554. Shall refuse insufficient surety.
 555. Shall post list of causes, when.
 556. Shall issue subpoenas, when; penalty.
 557. Papers, etc., to be turned over to successor, when.
 558. Settlement to be made, when.
 559. To reside in county.

MISBEHAVIOR IN OFFICE.

560. Guilty of misdemeanor, when.
 561. Suspended from office, when; trial of.
 562. How prosecuted.
 563. Notice of charges, how served.
 564. Who to prosecute.
 565. If guilty, court to enter order of removal.

SECTION 537. The clerks of the circuit court shall be elected by the qualified electors of the several counties for the term of two years, and shall be *ex officio* clerks of the county and probate courts and recorder: *Provided*, That in any county having a population exceeding fifteen thousand inhabitants, as shown by the last federal census, there shall be elected a county clerk in like manner as clerk of the circuit court, who shall be *ex officio* clerk of the probate court of said county. *Art. VII, sec. 19, Const.*

SEC. 538. The clerk of the circuit court, by virtue of his office, shall be master or commissioner of the circuit court, and shall have all the powers that now are, or may hereafter be, conferred by law on a master or commissioner in chancery, and shall receive for such services a compensation to be fixed by the court.

SEC. 539. The judge may appoint any other person master or commissioner in special causes in said court (a). *Act April 16, 1873.*

SEC. 540. Each clerk of the circuit court, before entering upon the discharge of the duties of his office, shall take and subscribe the oath prescribed in the constitution, and shall enter into bond, with good and sufficient security, to the state, in any sum not exceeding fifteen thousand dollars, at the discretion of the circuit court, or of the judge thereof, or judge of the county court in vacation, conditioned that he will well and truly perform the duties of his office and pay over to the proper officer or person all moneys that may come to his hands by virtue of his office (b), and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, papers, records,

(a) See *Worsham v. Freeman*, 34—55.

(b) When money in the control of the circuit court is by its order placed in the custody of the clerk, he holds it in his official capacity, and may be punished for contempt for failing to pay it over as ordered by the court and deprived of his office for malfeasance; and he and his sureties will be liable for it on his official bond to the party entitled to it. *State v. Watson*, 38—96.

seals and furniture belonging to his office. Such bond shall be approved as required by sections 4771-4772, and shall be recorded in the proper county and filed in the office of the secretary of state. *Act July 9, 1868, and act March 1, 1875, sec. 1.*

SEC. 541. If at any time the circuit court shall become satisfied that the security in the bond of any clerk is insufficient, or in danger of becoming insufficient, or that the penalty of such bond is not large enough, said court shall cause such clerk to enter into a new bond, with sufficient security, which shall be deposited in the office of the secretary of state.

SEC. 542. If any clerk shall fail to give such bond within fifteen days after he may be required by the court to give such new bond, his office shall be deemed vacant, and shall be filled accordingly (§). *Rev. Stat., chap. 25, secs. 5, 6.*

SEC. 543. All bonds of clerks deposited with the secretary of state shall be by him recorded in a book to be kept for that purpose, and a copy of such bond or of the record thereof, certified by the secretary of state under his official seal, shall be received as evidence in the same manner as the original in any court without proof of the execution. *Ib., sec. 7.*

SEC. 544. Each clerk may appoint one or more deputies, for whose official conduct he shall be responsible.

Such deputies shall possess the like qualifications and take the like oaths as their principals, and may, in the name of their principals, perform the duties required of their principals (c). *Rev. Stat., chap. 25, sec. 12.*

SEC. 545. Such appointment shall be in writing under the hand of the clerk, and shall be approved by the circuit court or judge thereof, or judge of the county court in vacation, which approval shall be indorsed upon said written appointment, and said appointment, with the indorsement thereon, shall be filed and recorded in the recorder's office of the county. *Ib., and act Dec. 11, 1852.*

DUTIES OF.

SEC. 546. He shall preserve the seal and other property belonging to his office, and shall provide suitable books, stationery, furniture and other things necessary for his office.

SEC. 547. He shall keep his office at the seat of justice of the county for which he is clerk, and shall there keep the records, papers, seals and property belonging to his office, and shall there transact his business.

SEC. 548. In case of danger from an invading enemy, he may remove the records, papers and other things belonging to his office to some secure place until the danger ceases.

SEC. 549. He shall seasonably record the judgments, rules, orders and other proceedings of the courts of which he is the clerk; make a complete alphabetical index thereto (d); issue and attest all processes when required by law; keep a perfect account of all arrearages coming into his hands and accruing to the county or state on account of taxes, fines or otherwise; make settlement with the proper court at each stated term and pay over all balances (e). *Rev. Stat., chap. 25, secs. 8-11.*

(§) See SECS. 4776-4778.

(c) A deputy clerk has no power to act officially except in the name of his principal, and unless he discloses the name of his principal his acts are void. *Hyde v. Benson*, 6-396.

(d) See SECS. 3948-3952.

(e) See SECS. 5827, 5828; *Lee County v. Abrahams*, 31-571.

SEC. 550. He shall indorse upon every paper filed in an action the day of filing it; and upon every order for a provisional remedy, and upon every bond taken thereunder, the day of its return to his office.

SEC. 551. He shall, upon the return of every summons served, enter upon the docket the name of the defendant or defendants summoned, and the day of the service upon each one. The entry shall be evidence of the service of the summons in case of the loss thereof.

SEC. 552. He may administer any oath or take any affidavit required or permitted in the progress of an action.

SEC. 553. He shall prepare, in a proper manner, every bond to be taken by or given before him or his court.

SEC. 554. He shall refuse any surety offered in a bond to be taken by him who is, in his opinion, insufficient (f). *Civil Code, secs. 770-774.*

SEC. 555. He shall, within twenty days before the commencement of each term of the court, put up in some convenient place in his office a list of causes to be tried at such term, distinguishing therein the day on which each cause is to be tried, and shall keep such list so affixed, until the end of such term, for the inspection of the parties litigant and their attorneys.

SEC. 556. He shall, upon demand and the payment of the legal fee therefor, issue subpoenas for witnesses to appear and testify on the day for which the cause is set in which the subpoenas are demanded; and every clerk who shall neglect or refuse to make out the dockets required by law, or to set and keep up such lists of causes, or to issue subpoenas as by law required, shall, on motion, be fined by the court in any sum not exceeding one hundred dollars. *Rev. Stat., chap. 116.*

SEC. 557. If any clerk of the circuit court resign, be removed from office or die, he or his executors or administrators shall deliver all records, papers, books, files, seals and other things belonging to his office to his successor, as soon as he is qualified, who shall take charge of and receipt for the same.

SEC. 558. Any clerk who shall resign or be removed from office, or the executor or administrator of any clerk who may die, shall render to the proper court, at the next term after such death, resignation or removal, a perfect account, on oath, of all arrearages of moneys received by him by virtue of his office, not before accounted for, and shall settle with said court as if said clerk was still in office; and for that purpose free access may be had to said office and the records, books, papers and files therein; and the court may compel such settlement and enforce the payment of any balance by attachment.

SEC. 559. Every clerk of the circuit court shall reside in the county for which he is clerk. *Rev. Stat., chap. 25, secs. 19-21.*

MISBEHAVIOR IN OFFICE.

SEC. 560. If any clerk shall knowingly and willfully do any act contrary to the duties of his office, or shall knowingly and willfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be removed from office.

SEC. 561. When the circuit court shall be satisfied, from its own knowledge, or from the information of others on oath, that the clerk of such court has been guilty of any misdemeanor in office, or shall be incapable of discharg-

(f) He may require sureties to justify. SEC. 5300.

ing the duties of his office according to law, or shall be a drunkard, such court shall give notice thereof to the prosecuting attorney, stating the charges against such clerk, and requiring him to prosecute the same; and such clerk may be suspended from office until a trial can be had, in which case the court shall appoint a temporary clerk, who shall possess the same qualifications, take oath and give bond, as required of clerks, possess the same powers, perform the same duties and receive the same fees, and continue in office until the clerk resume his office or a successor shall be qualified (*).

SEC. 562. When any prosecuting attorney shall be required to prosecute charges against any clerk, if the offense is indictable, he shall submit the same to the grand jury, in order that an indictment may be found; and, if the charges be for an offense not indictable, he shall make the same out and file them in the court, and cause a copy thereof to be served on such clerk, together with a notice requiring him to appear before the circuit court of the county in which such clerk may reside, on some specified day in the term, and answer the same.

SEC. 563. Such notice and copy of the charges shall be delivered to such clerk at least fifteen days before the day appointed for the answering thereof.

SEC. 564. The prosecuting attorney shall cause witnesses to be summoned to support such charges, or any indictment that may have been found against such clerk, and shall prosecute the same with speed; and such clerk shall appear and plead at the next term of the court, unless further time be given for that purpose.

SEC. 565. If such clerk shall plead "not guilty" to such charges or indictment, the court shall require a jury to be summoned to try the issue joined; and, if the jury find such clerk guilty, or if he shall plead guilty to the charges or indictment, it shall be the duty of the court to enter up an order removing such clerk from office (g), and from that time he shall cease to be clerk of such court, and the vacancy shall be filled according to law (h). *Ib.*, *secs.* 13-18.

CHAPTER XX.

COMMON AND STATUTE LAW OF ENGLAND.

SECTION

566. Up to the fourth year of James I, in force in this state.

SECTION

567. Crimes and misdemeanors punished under the common and statute law of England, when, how.

SECTION 566. The common law of England, so far as the same is applicable and of a general nature, and all statutes of the British parliament in aid of or to supply the defect of the common law made prior to the fourth year of James the First (a) (that are applicable to our own form of government), of a

(*) See SECS. 6475, 6478.

(g) See SECS. 2325, 6476.

(h) See SECS. 6473, 6474, 6478, and *art. VII, sec. 50, Const.*

(a) The reign of James the First commenced March 24, 1603.

general nature and not local to that kingdom, and not inconsistent with the constitution and laws of the United States or the constitution and laws of this state, shall be the rule of decision in this state unless altered or repealed by the general assembly of this state.

SEC. 567. In cases of crimes and misdemeanors committed in this state, the punishment of which has not been provided for by statute (b), the court having the jurisdiction thereof shall proceed to punish the offender under the provisions of the common or statute law of England put in force in this state by this act; but the punishment in such cases shall only be fine and imprisonment, and in such cases the fine shall not exceed one hundred dollars and the imprisonment shall not exceed three months. *Rev. Stat., chap. 28.*

CHAPTER XXI.

COMMISSIONERS IN OTHER STATES.

SECTION

568. Governor to appoint commissioners in other states to take depositions, affidavits and proofs, etc., of deeds.

SECTION

569. Acts to be effectual, etc.
570. Oath of office.

SECTION 568. The governor of this state may nominate, appoint and commission, under the great seal of this state, in any other state or territory of the United States, one or more commissioners, as he may think proper, to continue in office during the pleasure of the governor for the time being, who shall have power to administer oaths and affirmations, and to take depositions (c), affidavits and the proof and acknowledgment of deeds or other instruments of writing, to be used or recorded in this state (d).

SEC. 569. All oaths administered by the said commissioners, all affidavits and depositions taken by them, and all acknowledgments, etc., aforesaid, certified by them, shall be as effectual in law, to all intents and purposes, as if done and certified by any justice of the peace or other authorized officer within this state.

SEC. 570. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some justice of the peace or other officer authorized to administer oaths in the

(b) See SECS. 1961, 2322, 2323.

An officer or person who suffers the negligent escape of a felon may be indicted under sections 566, 567. *Martin v. State*, 32—124.

One who enters a dwelling house by force is indictable at common law. *State v. Leathers*, 31—44. See *Adler v. State*, 35—525.

(c) Depositions taken before a commissioner of deeds appointed by the governor of this state to act in another state may be read in evidence, without other proof of the appointment and authority of such commissioner than his own certificate and official seal. *Johnson v. Cocks*, 12—672.

(d) The affidavit to procure an attachment may be made before a commissioner. *Grider v. Williams*, 25—1. The term of office of a commissioner, under this act, does not expire with the term of office of the governor appointing him. *Kaufman v. Stone*, *Ib.*, 336. He may take affidavits to authenticate claims against an estate. *Ib.*, 186. And his certificate proves itself and needs no authentication. *Smith v. Van Gilder*, 26—527.

state for which such commissioner shall be appointed, that he will well and faithfully discharge all the duties of his said appointment, which said oath, together with the signature and an impression of the seal of the said commissioner, shall be filed in the office of the secretary of state within six months after the taking of the same. *Act Dec. 19, 1846.*

CHAPTER XXII.

COMMISSIONS (*).

SECTION

571. How to be issued, sealed, signed and attested.

572. What officers shall be commissioned.

573. Fee for commission, how paid.

SECTION

574. In what time fee for commission and duplicate oath to be forwarded.

575. Penalty for neglect to comply with preceding section.

SECTION 571. All commissions shall be issued in the name and by the authority of the State of Arkansas, sealed with the great seal of the state, signed by the governor and attested by the secretary of state. *Art VI, sec. 10, Const.*

SEC. 572. The commissioner of state lands, the judge and clerk of the Pulaski chancery court (a), and each judge of the supreme and circuit court, judge of the county and probate court, prosecuting attorney, clerk of the circuit court, county clerk, county treasurer, sheriff, coroner, surveyor, assessor, justice of the peace (b), notary public and militia officer elected or appointed in this state shall be commissioned by the governor. *Rev. Stat., chap. 27; act Jan. 23, 1875, sec. 61; art. VII, sec. 48, Const.*

SEC. 573. Any officer entitled to a commission may send the fee therefor direct to the state treasurer, who shall at once execute duplicate receipts for such fee, which receipts he shall present to the auditor, who shall countersign the same and charge the amount therein specified to the treasurer, as provided in sections 3210, 3211, whereupon the treasurer shall file one of said receipts with the auditor and the other with the secretary of state, who shall immediately forward such commission to the officer applying therefor. *Act March 2, 1883, sec. 3.*

SEC. 574. All state and county officers, both civil and military, who are required by law to be commissioned by the governor of this state, are required to forward the legal fee for their commissions to the treasurer of state within sixty days after their election, and they shall, after said commissions have been

(*) A commission constitutes one an officer *de facto*. It is superseded upon the issuance of a commission to another who has been legally elected to fill the office. *State v. Johnson*, 17—407. See *Pierce v. Edington*, 38—150.

(a) The present constitution does not appear to contemplate the issue of commissions to the secretary of state, treasurer of state, auditor of state and attorney-general. See *art. VI, sec. 3*. Nor does the general election law. See *SECS. 2710, 2713*. The act creating the office of superintendent of public instruction has no provision requiring that officer to be commissioned. See *SECS. 6145-6146*.

(b) Constables receive no commission, but are furnished by the county judge with a certificate of election on which their official oaths are to be indorsed. See *art. VII, secs. 47, 48*.

received, forward within fifteen days their duplicate oath to the secretary of state, to be by him recorded and filed in his office.

SEC. 575. In case any such officer, elected or appointed and commissioned by the governor, shall fail or neglect so to apply for or procure his said commission within the time above specified, or shall, after said commission shall have been obtained, fail or neglect to forward to the office of secretary of state his duplicate oath, for record in said office, within the time above specified, then the office to which such person was commissioned shall be deemed vacant, and the governor, on being satisfied from the official records of the office of secretary of state of the existence of such vacancy, by reason of any of the causes above enumerated, shall proceed to fill the same in the manner now provided by law. *Act Nov. 26, 1875.*

CHAPTER XXIII.

CONFIRMATION OF TITLES.

SECTION

576. Who may have title to lands confirmed.

577. Publication of notice to claimants.

578. What shall be evidence of such publication.

579. In what case the court shall confirm or annul title.

SECTION

580. Effect of sheriff's or auditor's deed as evidence.

581. Effect of confirmation.

582. Costs thereof, how paid.

583. Effect of such sales when not confirmed.

SECTION 576. The purchasers, or the heirs and legal representatives of purchasers, of lands at sheriff's sales, those made by the county clerks or by the state land commissioner of this state, in pursuance of any of the laws thereof, or those made by the order, decree or authority of any court of record, may protect themselves from eviction of the lands so purchased, or from any responsibility as possessors of the same, by pursuing the rules hereinafter prescribed. *Rev. Stat., chap. 149, sec. 1, as amended by act March 21, 1881.*

SEC. 577. The purchasers, or the heirs and legal representatives of purchasers, at all sales which have been, or may hereafter be, made may, when such lands are not made redeemable by any of the laws of this state applicable to such sales, or, if redeemable, may, at any time after the expiration of the time allowed for such redemption, publish six weeks in succession, in some newspaper published in this state, a notice calling on all persons who can set up any right to the lands so purchased, in consequence of any informality or any irregularity or illegality connected with such sale, to show cause, at the first circuit court which may be held for the county in which such lands are situated six months after the publication of said notice, why the sale so made should not be confirmed, which notice shall state the authority under which the sale took place, and also contain the same description of the lands purchased as that given in the conveyance to the buyer, and shall further declare the price at which the land was bought and the nature of the title by which it is held (a).

(a) See *Payne v. Danley*, 18—441; *Bonnell v. Roane*, 20—114; *Scott v. Pleasants*, 21—369; *Wallace v. Brown*, 22—118; *Scott v. Watkins*, 22—556.

SEC. 578. The affidavit of one or more of the publishers or proprietors of said newspaper, setting forth a copy of such notice, with the date of the first publication thereof and number of insertions, sworn to and subscribed before some justice of the peace of the county or city in which said newspaper is published, with a certificate of magistracy from the clerk of the court of said county, under the seal of his office, on being produced to said court, shall be taken and considered as sufficient evidence of the fact of publication, the date and number of insertions and form of such notice.

SEC. 579. On producing the proof of said notice, as required in the preceding section, the party publishing the same may apply to the judge of the court aforesaid to confirm said sale; and it shall be the duty of the judge, in case no cause is shown against the prayer of said purchaser, to confirm the sale in question: *Provided, always*, That before he does so confirm it he shall be fully satisfied that said notice is in due form, that it has been regularly published, that the land has been correctly described and the price at which it was purchased truly stated, in conformity to the provisions of this act; but in case opposition be made, and it shall appear that the sale has been made contrary to law, it shall be the duty of the judge to annul it.

SEC. 580. A sheriff's or auditor's deed, given in the usual form, without witnesses, shall be taken and considered by said court as sufficient evidence of the authority under which said sale was made, the description of the land, and the price at which it was purchased.

SEC. 581. The judgment or decree of the court confirming said sale shall operate as a complete bar against any and all persons who may hereafter claim said land in consequence of informality or illegality in the proceedings; and the title to said land shall be considered as confirmed and complete in the purchaser thereof, his heirs and assigns forever; saving, however, to infants, persons of unsound mind, imprisoned beyond seas, or out of the jurisdiction of the United States, the right to appear and contest the title to said land within one year after their disabilities may be removed (b).

SEC. 582. When no opposition is made to the confirmation of such sale, the costs attending the proceedings shall be paid by the party praying such confirmation; and where opposition is made, the costs shall be borne by the party against whom judgment is rendered.

SEC. 583. In case any such purchaser shall not deem it necessary to use the remedy conferred by this act to confirm the title thereto, then the said sale shall have the effect given to it by law. *Rev. Stat., chap. 149.*

(b) A decree under this section confirming a tax title can have no effect to preclude a party in possession of the land from the benefit arising from lapse of time prior to the rendition of the decree—the proceeding for confirmation being in nowise a possessory proceeding. *Buckingham v. Hallett*, 24—519.

CHAPTER XXIV.

CONSTABLES.

SECTION

584. When elected; term of office; how commissioned.
 585. Judges of election to determine tie vote.
 586. Bond.
 587. Approval of.
 588. Failing to give bond, office deemed vacant.
 589. Bond to be filed and recorded.
 590, 591, 592. Duty of, as conservator of the peace.
 593. Penalty for neglect of duty.
 594. May appoint deputies.
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 596. Constables responsible for acts of deputies.
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 598. Copy of charges to be served.
 599. Sureties responsible for failure to pay, etc.

SECTION

600. Not responsible where suit brought.
 601. Township divided, who constable.
 602. May execute civil process throughout county.
 603. Where vacancy exists, who to serve.
 604. Vacancy; how filled.
 605. Special election; how held, etc.
 606. Sheriff and coroner both vacant, constable may serve process.
 607. No coroner in county, and sheriff disqualified, constable may serve process.
 608. Fees for.
 609. Constable may execute process anywhere in county.

SECTION 584. The qualified electors of each township shall elect a constable for the term of two years, who shall be furnished by the presiding judge of the county court with a certificate of election, on which his official oath shall be indorsed. *Art. VII, sec. 47, Const.*

SEC. 585. In case of a tie in the election of any constable, it shall be determined by the judges of said election (*).

SEC. 586. Every constable shall, within ten days after his election or appointment, enter into bond to the State of Arkansas, with good and sufficient securities, in any sum not less than five hundred nor more than five thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable according to law.

SEC. 587. Such bond shall be approved by the circuit court in the manner provided by law (†).

SEC. 588. If any constable shall fail to enter into such bond within the time prescribed the office shall be deemed vacant.

SEC. 589. The bond of each constable shall be filed and recorded in the office of the recorder of the county, and may be sued on at the instance of any person injured by its breach.

SEC. 590. Each constable shall be a conservator of the peace throughout his county, and it shall be his duty to suppress all riots, routs, affrays, fighting and unlawful assemblies, and he shall keep the peace, and shall cause all offenders to be arrested and taken before some justice of the peace, to be dealt with according to law, and shall well and truly present to the proper officer all affrays and other offenses against the laws of the state which shall come within his knowledge (a). *Rev. Stat., chap. 29, secs. 2, 10-13 and 15.*

(*) See SEC. 2711.

(†) See SECS. 4771-4775, to which this section is conformed.

(a) A constable is a peace officer, and as such has authority to arrest offenders against the law; but he is not authorized to execute a warrant of arrest or other process directed to the sheriff unless deputized in the manner provided by law. *Winkler v. State*, 32-539.

SEC. 591. If any offense cognizable before a justice of the peace shall be committed in the presence of a constable, it shall be his duty to arrest the offender and take him before a justice of the peace.

SEC. 592. If it shall come to the knowledge of any constable that any such offense has been committed in his township, it shall be the duty of such constable to present the offender to a justice of the peace of the township, in order that he may be arrested and brought to trial as prescribed by law.

SEC. 593. If any such constable shall fail, refuse or neglect to perform the duties imposed upon him by sections 590, 591 and 592, he shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than one hundred dollars. *Act Dec. 26, 1848, secs. 2-4.*

SEC. 594. Each constable may appoint one or more deputies.

SEC. 595. The appointment of such deputies shall be made to the approval of the county court.

SEC. 596. The constable shall be responsible for the acts of his deputies.

SEC. 597. If any constable shall fail to pay over any money collected by him, after demand being made, or shall fail to return any execution or other process within the time specified in such process, or shall fail or neglect to perform any other duty required by law, he shall be removed from office by the county court, on motion, on charges exhibited against him (b).

SEC. 598. A copy of such charges, together with notice of the time of hearing the same, shall be served on said constable at least five days before the term of the court at which such motion shall be made, which may be served in the same manner as a summons.

SEC. 599. If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor in his official capacity, and shall fail to pay to such person, on demand, the amount he may have collected, and return such bonds, bills, notes or accounts, if the same have not been collected, such constable and his securities shall be responsible on his official bond for the amount of such bonds, bills, notes or accounts not paid over or returned.

SEC. 600. No constable shall be responsible for any bond, bill or note for which he may have given his receipts, and on which suit may have been brought.

SEC. 601. If any township be divided, the constable in office at the time of the division shall continue in office, and be constable of the township in which he resides.

SEC. 602. Each constable may execute civil process throughout the county, but in no case shall he be allowed mileage for the service of any process he may serve out of his township, other than from the residence of the defendant in such process to the nearest justice of the peace in the township in which such defendant resides. *Rev. Stat., chap. 29, secs. 16, 19-23 and 26.*

SEC. 603. When the office of constable, in any township, shall become vacant, any constable of any adjoining township, during such vacancy, shall execute and return all process directed to him, against any person in such township where the vacancy may exist, issued by any justice of the peace in said

(b) For summary judgment against constable for failing to return or pay over money on execution, see SECS. 4128-4133.

For like judgment against constable and his sureties, see SECS. 3957-3965.

township where such office is vacant, and, in addition to the fees now allowed by law, shall receive for the service of each and every summons or subpœna, or other process, except executions, so directed to him, two and one-half cents per mile, going and returning from his own residence to that of the person named in such process residing farthest from him. *Act Jan. 3, 1845.*

SEC. 604. Whenever a vacancy shall occur in the office of constable from any cause, or in case of a failure to elect, or if the person elected to such office shall fail to qualify in the manner and time required by law, the county court of the county in which such vacancy shall occur shall order a special election in the township in which the vacancy exists to fill such vacancy, specifying in such order the time of holding such election. The sheriff shall give ten days' notice of such election by posting four notices in the most public places in the township: *Provided*, In case of vacancy occurring within six months of a general election, the county court shall fill such vacancy by appointment (c).

SEC. 605. Such election shall be held and the returns made in the same manner provided by law for holding general elections. *Act Dec. 19, 1874.*

SEC. 606. In all cases where the offices of both sheriff and coroner shall be vacant, or they shall be defendants in any suit, any constable of the county shall execute and return all process to him directed, in the same manner that sheriffs and coroners are now required by law to execute and return process.

SEC. 607. In all cases where there is no coroner in any county, and the sheriff thereof shall be interested in any suit or suits, any constable of the county where such vacancy may exist shall execute and return all process to him directed (d).

SEC. 608. For all services performed by any constable under the two preceding sections, he shall be entitled to the same fees as are allowed the sheriff for similar services.

SEC. 609. Any constable to whom any process may be directed shall have power to execute such process anywhere within his county. *Act Dec. 21, 1846.*

(c) See SEC. 2716 and art. VII, sec. 50, *Const.* As to election or appointment of constables for new townships, etc., see SECS. 6445, 6446.

(d) Where the office of sheriff and coroner are both vacant, or where there is no coroner, and the sheriff is interested in the suit, and process is directed to the constable, under this section, the fact of such vacancy or disqualification ought to be suggested and recited in the writ, but the omission of such recital does not make the writ void, and it may be supplied by amendment. Judgment reversed for refusing to permit such amendment. *Thompson v. Bremage*, 14—59.

CHAPTER XXV.

CONSTITUTIONAL AMENDMENTS.

SECTION

- 610. How proposed, submission, separate vote, etc.
- 611. Resolution proposing, how voted on, etc.
- 612. How enrolled and signed.
- 613. Proceedings in case of disapproval.
- 614. Effect of withholding five days, etc.
- 615. Amendment, when and how to be numbered; where filed.
- 616. Entry on journals; publication, how made.
- 617. Ballots of electors, notice as to, etc.
- 618. Secretary of state to contract for publishing in weekly papers.
- 619. Rates of publishing.

SECTION

- 620. No payment to be made for publishing in daily papers.
- 621. Ballots, what to contain.
- 622. Duties of election officers.
- 623. Duties of county clerks; comparing returns, etc., general election law to govern.
- 624. Abstracts of election, how sent to secretary of state.
- 625. Returns, how to be kept by secretary of state; how laid before general assembly.
- 626. Adoption of amendment, when to be declared; proclamation of governor, etc.

SECTION 610. Either branch of the general assembly, at a regular session thereof, may propose amendments to this constitution; and if the same be agreed to by a majority of all the members elected to each house, such proposed amendments shall be entered on the journals with the yeas and nays, and published in at least one newspaper in each county where a newspaper is published, for six months immediately preceding the next general election for senators and representatives, at which time the same shall be submitted to the electors of the state, for approval or rejection; and if a majority of the electors voting at such election adopt such amendments, the same shall become a part of this constitution. But no more than three amendments shall be proposed or submitted at the same time. They shall be so submitted as to enable the electors to vote on each amendment separately. *Art. XIX, sec. 22, Const.*

SEC. 611. Amendments to the constitution shall be proposed in either branch of the general assembly in the form of a joint resolution, which shall be read in full on three several days in each house, unless the rules be suspended by two-thirds of the house, when the same may be read a second or third time on the same day, and on the final passage of such proposed amendment through each house the vote shall be taken by yeas and nays, and the names of the persons voting for and against the same be entered on the journal; and no amendment shall be proposed unless the same be agreed to by a majority of all the members elected to each house.

SEC. 612. When any joint resolution proposing an amendment to the constitution shall have passed each house as prescribed in the preceding section, it shall be enrolled and signed by the president of the senate and speaker of the house, and shall be signed by the governor.

SEC. 613. In case the governor shall disapprove such proposed amendment, he shall return the same to the house in which it originated, with his objections thereon, which house shall enter the objections at large upon the journal and proceed to reconsider the proposed amendment. If on such reconsideration a majority of the whole number elected to that house shall agree to the proposed amendment, it shall be sent, with the objections, to the other house, by which

it shall likewise be reconsidered; and if approved by a majority of the whole number elected to that house, it shall be proposed as an amendment to the constitution, but in such case the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the resolution shall be entered on the journal.

SEC. 614. If any such joint resolution proposing an amendment to the constitution shall not be returned by the governor within five days, Sunday excepted, after it shall have been presented to him, the same shall have like effect as if he had signed it, unless the general assembly, by its adjournment, prevent its return, in which case it shall be treated as a proposed amendment to the constitution, and be published and voted upon as such, unless the governor shall file the same, with his objections, in the office of the secretary of state, and give notice within twenty days after such adjournment (*).

SEC. 615. Whenever any such joint resolution shall be approved by the governor and signed by him, he shall number the amendment in the order of its approval, and shall file the same in the office of the secretary of state.

SEC. 616. Such proposed amendment shall be entered on the journals of each house, with the yeas and nays, and it shall be the duty of the secretary of state to publish said proposed amendment in at least one newspaper (†) in each county where a newspaper is published, for six months immediately preceding the next general election for senators and representatives, at which time the same shall be submitted to the electors of the state for approval or rejection.

SEC. 617. It shall be the duty of the secretary of state, in connection with a copy of the proposed amendment, to give notice in the same newspapers that each elector on depositing his ballot at such election shall vote for or against said amendment. *Act April 2, 1879, secs. 1-6.*

SEC. 618. Hereafter when an amendment to the constitution of this state is submitted to the people for their ratification at any election, in the manner heretofore provided by law, it shall be the duty of the secretary of state to contract with one weekly paper in each county where such weekly is published to publish said amendment for six months preceding said election.

SEC. 619. The secretary of state shall contract for publishing such amendment to the constitution at rates no greater than those now allowed by law for legal advertisements in such papers: *Provided*, That each paper so contracted with shall be allowed the same price for said publication.

SEC. 620. The auditor of state shall not be authorized to issue warrants in payment for publishing a constitutional amendment in any daily paper, or in more than one weekly in the same county. *Act Feb. 19, 1883.*

SEC. 621. At the next general election after said amendment shall be proposed each elector shall have written or printed on his ballot: For the amendment, —; or, Against — amendment; the above blanks to be filled in letters or figures with the number of the proposed amendment, and if there be more than one amendment proposed at the same election, the electors shall vote for or against each amendment separately by number.

SEC. 622. It shall be the duty of the judges and other officers of election to count and return to the proper clerk the votes cast for and against each amendment separately, and be governed in all respects in reference to the vote

(*) See art. VI, secs. 15 and 16, *Const.*

(†) See SECS. 610, 618-620.

on such amendment or amendments, and the return of the same, by the laws regulating elections for senators and representatives at such general election.

SEC. 623. The clerk of the county court shall open and compare the election returns upon said amendment at the same time and in the same manner as required by election laws in case of senators and representatives, and shall make in like manner abstracts of the votes given for or against each amendment, if more than one, on separate sheets of paper, and the abstracts of the vote made out by such clerk on any amendment shall be separate from the abstracts of the vote for any office; and the clerk of the county court, in counting and comparing and abstracting the returns of such vote, shall be governed by the general election laws regulating his duties. *Act April 2, 1879, secs. 7-9.*

SEC. 624. Each clerk of the county court, at the same time and in the same manner that he is required to send the abstracts of election of senators and representatives in the general assembly, shall send to the secretary of state copies of the abstracts filed in his office of the returns of the vote on said amendment, plainly marked on the envelope thereof the words: "Returns of vote on amendment No. ——. From the county of ———." And in case of a failure to receive any returns of such vote at the seat of government for ten mails after the same is due, the secretary of state shall dispatch a messenger to the county from which returns have not been received, with directions to bring up such returns or copies thereof.

SEC. 625. When all the returns have been received by the secretary of state said secretary shall keep such returns in the original envelopes with the seals unbroken until the general assembly shall convene, when he shall send such returns to the speaker of the house of representatives at the same time and in the same manner as is now provided by law for sending in the election returns for governor and other state officers, and said returns shall be opened and counted in the presence of the general assembly in joint convention assembled.

SEC. 626. If it shall appear that a majority of the electors voting at such election adopt such amendment, then the speaker shall declare such proposed amendment duly adopted by the people of Arkansas. And when so declared adopted, the speaker of the house of representatives shall cause a true copy of such amendment to the constitution of the State of Arkansas, signed by the president of the senate and the speaker of the house of representatives, and attested by the secretary of the senate and the clerk of the house of representatives, to be filed in the office of the secretary of state, and the same shall be and remain a record of said office. The governor shall, thereupon, publish his proclamation in some newspaper of general circulation, announcing the ratification and adoption of said proposed amendment, and it shall have all the force and effect of any other part of the present constitution, and shall be recognized by the legislative, executive and judicial departments of the State of Arkansas, from the filing of such certified copy in the office of the secretary of state as a part of the organic law of the state. *Ib., secs. 10, 11, as amended by act March 1, 1883.*

CHAPTER XXVI.

CONTEMPTS.

SECTION

627. Punishment of, what contempts may be regulated by law.
 628. Definition of.
 629. Punishment of.
 630. Proceedings upon contempts.
 631. Cause of committal to be set forth in order.
 632. To what cases provisions of this act do not extend.

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633. Punishment for, no bar to indictment.
 634. Power of justices of the peace to punish.
 635. Nature and extent of punishment.
 636. Accused to be heard.
 637. Record of conviction to be made.
 638. Warrant of commitment.

SECTION 627. The general assembly shall have power to regulate, by law, the punishment of contempts; not committed in the presence or hearing of the courts, or in disobedience to process. *Art. VII, sec. 26, Const.*

SEC. 628. Every court of record shall have power to punish, as for criminal contempt, persons guilty of the following acts (a):

First. Disorderly, contemptuous or insolent behavior committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

Second. Any breach of the peace, noise or disturbance directly tending to interrupt its proceedings.

Third. Willful disobedience of any process or order lawfully issued or made by it.

Fourth. Resistance willfully offered by any person to the lawful order or process of the court.

Fifth. The contumacious and unlawful refusal of any person to be sworn as a witness, and, when so sworn, the like refusal to answer any legal and proper interrogatory (b).

SEC. 629. Punishments for contempt may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fines shall in no case exceed the sum of fifty dollars, nor the imprisonment ten days (c). Courts shall always have power to imprison until their adjournment, and when any person shall be committed to prison for the non-payment of any such fine, he shall be discharged at the expiration of thirty days.

SEC. 630. Contempts committed in the immediate view and presence of the court may be punished summarily; in other cases the party charged shall be notified of the accusation, and have a reasonable time to make his defense.

SEC. 631. Whenever any person shall be committed for a contempt under

(a) See *State v. Morrill*, 16—384, for full discussion of the power of courts to punish for contempts. See also, *Harrison et al. v. State*, 35—458; *Beene v. State*, 22—149.

(b) In the matter of contempts there are various other provisions in the later laws, with penalties differing from those prescribed by this chapter, some of which are referred to here. As to *Witnesses*, SECS. 2885—2890, 2144, 2145; *Clerks*, 556; *Sheriffs*, 4977; *Grand Jurors*, 3992; *Enforcement of Mandate by Supreme Court*, 1309; *Power of Courts to Enforce Orders in Attachment, Garnishment, &c.*, 321, 342, 343, 351, 374, 3088; *In Injunction*, 3754; *Divorce*, 2563; *Deposit*, 5294; *Powers of County Courts*, 1408.

(c) But as to witnesses, see SECS. 2885—2890.

the provisions of this act, the substance of his offense shall be set forth in the order or warrant of commitment.

SEC. 632. Nothing in the preceding sections shall be construed to extend any proceedings against parties or officers, as for contempt, for the purpose of enforcing any civil right or remedy.

SEC. 633. Persons punished for contempt under the preceding provisions shall, notwithstanding, be liable to an indictment for such contempt if the same be an indictable offense; but the court before which a conviction may be had on such indictment shall, in forming its sentence, take into consideration the punishment before inflicted. *Rev. Stat., chap. 43, secs. 37-42.*

SEC. 634. In the following cases, and no other, a justice of the peace may punish, as for contempts, persons guilty of the following acts:

First. Disorderly, contemptuous and insolent behavior toward such justice of the peace while engaged in the trial of a cause, or in rendering a judgment, or in any judicial proceeding, which shall tend to interrupt such proceedings or impair the respect due to his authority.

Second. Any breach of the peace, noise or other disturbance tending to interrupt the official proceeding of such justice.

Third. Resistance unlawfully offered in the presence of the justice to the execution of any lawful order or process issued by him.

Fourth. For the disobedience of any process issued by him requiring the attendance of a witness. *Rev. Stat., chap. 86, sec. 16.*

SEC. 635. Punishments for contempts in the foregoing cases may be by fine not exceeding thirty dollars, or by imprisonment in the county jail not exceeding five days (d), at the discretion of the justice; but no person shall remain in prison for the non-payment of a fine. *Ib., sec. 17.*

SEC. 636. No person shall be punished for a contempt before a justice of the peace until an opportunity has been given him to be heard in his defense, and for that purpose the justice may issue a warrant to bring the offender before him. *Ib., sec. 18.*

SEC. 637. Upon the conviction of any person for a contempt, the justice shall make up a record of the proceedings on such conviction, stating therein the particular circumstances of the offense and the judgment rendered thereon. *Ib., sec. 19.*

SEC. 638. The warrant of commitment for any contempt shall set forth the particular circumstances of the offense, or it shall be void. *Ib., sec. 20.*

(d) But as to witnesses, see SECS. 2885-2888.

CHAPTER XXVII.

CONVEYANCES OF REAL ESTATE.

SECTION

639. Lands may be aliened by deed. Words "*grant, bargain and sell*" equivalent to express warranty, of what.
640. Breaches may be assigned as upon express covenant.
641. Conveyance in fee simple.
642. Subsequently acquired title by grantor inures to benefit of grantee.
643. A fee tail an estate for life.
644. One may convey notwithstanding adverse possession.
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646. Wills not embraced by this act.
647. Grant of lands to two or more constitutes them tenants in common.
648. Married woman may convey her real estate, how.
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651. Proof or acknowledgment of deed.
- 652, 653. Acknowledgment to be attested, how.
654. Certificate of.
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659. Married women, conveyance and relinquishment of dower by.
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665. Deed lost, record or transcript thereof evidence.
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- 668, 669. Administrators, etc., deeds by; effect of; copy evidence.
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DEFECTIVE RECORDING AND ACKNOWLEDGMENTS CURED.

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680. Acknowledgments before clerks of courts of record declared valid.
681. Acknowledgments before notaries out of this state declared valid.
682. Acknowledgments before county and probate judges in this state declared valid.
683. Defective acknowledgments of deeds recorded prior to January 1, 1883, declared valid; exceptions.
684. Acknowledgments defectively certified or otherwise informal declared valid.

SECTION 639. All lands, tenements and hereditaments may be aliened and possession thereof transferred by deed without livery of seizin, and the words "*grant, bargain and sell*" shall be an express covenant to the grantee, his heirs and assigns, that the grantor is seized of an indefeasible estate in fee simple, free from incumbrance done or suffered from the grantor, except rents or services that may be expressly reserved by such deed, as also for the quiet enjoyment thereof against the grantor, his heirs and assigns, and from the claim or demand of all other persons whatsoever, unless limited by express words in such deed (a).

SEC. 640. The grantee, his heirs or assigns, may in any action assign breaches as if such covenants were expressly inserted.

(a) See *Brodie & King v. Watkins and wife*, 31—319.

A grantor of real estate is not responsible on the statutory covenant implied by the use of the words "*grant, bargain and sell*," for incumbrances other than those done or suffered by himself. *Winston v. Vaughan*, 22—72.

A deed delivered passes the title as between the parties, although it is neither acknowledged nor recorded, and is good without date, as it takes effect from delivery. *Floyd v. Ricks*, 14—286. Any right, interest or title that will descend may be alienated by deed. *Cloy v. Beebe*, *Id.*, 489.

SEC. 641. The term or word "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; but all deeds shall be construed to convey a complete estate of inheritance in fee simple, unless expressly limited by appropriate words in such deed.

SEC. 642. If any person shall convey any real estate by deed, purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time of such conveyance have the legal estate in such lands, but shall afterward acquire the same, the legal or equitable estate afterward acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance (b).

SEC. 643. In cases when by common law any person may hereafter become seized in fee tail of any lands or tenements, by virtue of any devise, gift, grant or other conveyance, such person, instead of being or becoming seized thereof in fee tail, shall be adjudged to be and become seized thereof for his natural life only, and the remainder shall pass in fee simple absolute to the person to whom the estate tail would first pass according to the course of the common law by virtue of such devise, gift, grant or conveyance.

SEC. 644. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest in the same manner and with like effect as if he was in the actual possession thereof.

SEC. 645. The term "*real estate*," as used in this act, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real.

SEC. 646. This act shall not be construed so as to embrace last wills and testaments.

SEC. 647. Every interest in real estate, granted or devised to two or more persons, other than executors and trustees as such, shall be in tenancy in common, unless expressly declared in such grant or devise to be a joint tenancy (c).

SEC. 648. A married woman may convey her real estate or any part thereof by deed of conveyance, executed by herself and her husband, and acknowledged and certified in the manner hereinafter prescribed (d).

(b) If one convey real estate by deed purporting to convey fee simple or less estate, and shall not at the time have the legal estate therein, but shall afterward acquire the legal title, the same vests in the grantee as effectually as though originally conveyed. *Cocke v. Brogan & Thorn*, 5—693; *Holland v. Rogers*, 33—251.

If one sells and conveys real estate to which he has no title, or an imperfect title, at the time of the sale, and subsequently acquires a perfect title, it inures to the benefit of the grantee; and if, between the date of the conveyance and the acquisition of the perfect title, a judgment is rendered against the grantor, the title of the grantee is prior to the lien of the judgment. *Watkins & Trapnall v. Wassell*, 15—73.

Sec. 642 applies to conveyances made by corporations as well as individuals. *Jones v. Green*, 41—363.

(c) See *Cockrill v. Armstrong*, 31—580.

(d) See note (ww) to sec. 7, art. IX, of the Constitution. The section referred to is as follows: "The real and personal property of any *femme covert* in this state, acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain her separate estate and property, and may be devised, bequeathed or conveyed by her the same as if she were a *femme sole*; and the same shall not be subject to the debts of her husband."

Under this provision a married woman may convey estates acquired since its adoption without her husband joining in the conveyance and without private examination and acknowledgment of the deed. *Roberts v. Wilcoxon*, 36—355; *Ward v. Ward*, *Ib.*, 586; *Chrisman v. Parlee*, 38—31; *Felkner v. Tighe*, 39—357; *Donahue v. Mills*, 41—421. But the constitution did not and could not divest the vested marital rights of the

SEC. 649. A married woman may relinquish her dower in any of the real estate of her husband by joining with him in a deed of conveyance thereof, and acknowledging the same in the manner hereinafter prescribed (e).

SEC. 650. Deeds and instruments of writing for the conveyance of real estate shall be executed in the presence of two disinterested witnesses, or, in default thereof, shall be acknowledged by the grantor in the presence of two such witnesses, who shall then subscribe such deed or instrument in writing for the conveyance of such real estate; and when the witnesses do not subscribe the deed or instrument of writing aforesaid at the time of the execution thereof, the date of their subscribing the same shall be stated with their signatures (f). *Rev. Stat., chap. 31, secs. 1-12.*

SEC. 651. The proof or acknowledgment of every deed or instrument of writing for the conveyance of any real estate, shall be taken by some one of the following courts or officers:

First. When acknowledged or proven within this state before the supreme court, the circuit court, or either of the judges thereof, or the clerk of any court of record, or before any justice of the peace (g), or notary public.

Second. When acknowledged or proven without this state and within the United States or their territories, before any court of the United States or of any state or territory, having a seal, or the clerk of any such court, or before any notary public, or before the mayor of any city or town, or the chief officer of any city or town having a seal, or before a commissioner appointed by the governor of this state (h).

husband acquired in lands of the wife before its adoption. *Tiller v. McCoy*, 38—91; *Shryock v. Cannon*, 39—434. Marriage does not give a female infant a capacity to convey real estate. *Harrod v. Meyers*, 21—592; *Watson v. Billings*, 38—278. But "females of the age of eighteen years shall be considered of full age for all purposes." SEC. 3464. A married woman can not make an executory contract to convey land which will bind her or her heirs. *Felkner v. Tighe*, 39—357. See *Rockafellow v. Oliver*, 41—169.

(e) The relinquishment of dower by a married woman while under lawful age is voidable. *Watson v. Billings*, 38—278. See note (d) *ante*.

A married woman may relinquish her dower by joining her husband in the deed and acknowledging the same in proper form; without joining in the deed the acknowledgment is not sufficient. *Witter v. Biscoe et al., trustees, etc.*, 13—422. A married woman residing in Louisiana can convey land in Arkansas only in the manner prescribed by statute. *McDaniel v. Grace et al.*, 15—465.

When a husband's deed is followed by a paragraph relinquishing dower, and then follow the signatures of both husband and wife, this is such joining in the deed as is required for the relinquishment of dower. *Meyer v. Gossett*, 38—377.

A married woman can not release dower in favor of her husband; she can only release it by joining with the husband in a deed to a third person. *Pillow v. Wade and wife*, 31—678; *Countz v. Markling*, 30—17.

A wife may relinquish her dower by joining in her husband's deed and acknowledging the relinquishment of dower in the form prescribed in section 659, without any clause of relinquishment in the deed. *Dutton v. Stuart* 41—101.

(f) A deed for lands executed not in the presence of witnesses, but acknowledged as required by law, is sufficient; no subscribing witnesses are necessary where the execution is duly acknowledged. This is one method; another is by the testimony of one of the subscribing witnesses, when the deed must be executed in the presence of two witnesses or acknowledged by the grantor in their presence when executed before. Either method is effectual. *Coker v. Brogan & Thorne*, 5—693.

It is a general principle of the common law that the laws of the place where real property is situate exclusively govern, in respect to the rights of the parties, the modes of transfer, and the solemnities which should accompany them. *McDaniel v. Grace et al.*, 15—475.

A deed without attesting witnesses or acknowledgment is good and will pass the legal title as between the grantor and grantee; and if acknowledged and recorded after recovery of judgment against the grantor, but prior to a sale under execution is good as against the purchaser at judicial sale. *Jackson v. Allen*, 30—110, and cases there cited.

(g) See *Briscoe v. Byrd*, 15—655.

(h) A justice of the peace or chairman of a county court of another state can not take acknowledgments of mortgages of lands in Arkansas. *Worsham v. Freeman*, 34—55.

Third. When acknowledged or proven without the United States, before any court of any state, kingdom or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any officer of any foreign country who, by the laws of such country, is authorized to take probate of the conveyance of real estate of his own country, if such officer has, by law, an official seal. *Ib.*, sec. 13, act April 7, 1873, sec. 1, and act Dec. 19, 1846, sec. 1, as amended by act Dec. 14, 1874.

SEC. 652. In cases of acknowledgment or proof of deeds or conveyances of real estate, taken within the United States or territories thereof, when taken before any court or officer having a seal of office, such deed or conveyance shall be attested under such seal of office; and if such officer have no seal of office, then under the official signature of such officer (i).

SEC. 653. In all cases of deeds and conveyances proven or acknowledged without the United States or their territories, such acknowledgment or proof must be attested under the official seal of the court or officer before whom such probate is had.

SEC. 654. Every court or officer that shall take the proof (j) or acknowledgment of any deed or conveyance of real estate, or the relinquishment of dower of any married woman in any conveyance of the real estate of her husband, shall grant a certificate thereof and cause such certificate to be indorsed on said deed, instrument, conveyance or relinquishment of dower, which certificate shall be signed by the clerk of the court where probate is taken in court, or by the officer before whom the same is taken and sealed, if he have a seal of office (k).

SEC. 655. When any grantor in any deed or instrument that conveys real estate, or whereby any real estate may be affected in law or equity, or any witness to any like instrument, shall present himself before any court or other officer for the purpose of acknowledging or proving the execution of any such deed or instrument as aforesaid, if such grantor or witness shall be personally unknown to such court or officer, his identity and his being the person he purports to be on the face of such instrument of writing, shall be proven to such court or officer, which proof may be made by witnesses known to the court or officer, or the affidavit of such grantor or witness, if such court or officer shall be satisfied therewith; which proof or affidavit shall also be indorsed on such deed or instrument of writing.

(i) Acknowledgments before a county court of another state must be authenticated by the seal of the court. *Worsham v. Freeman*, 34—55.

(j) It is not sufficient for the officer to certify in general terms that the deed was proved; it should appear from the certificate that the witness was sworn, and that he stated that the party whose name appears to the deed, signed it, or executed it, or acknowledged that he had done so, or some such language amounting to proof of the execution of the deed. And it must appear that such proof was made by one of the attesting witnesses; unless it is made to appear that the subscribing witnesses are dead or can not be had. *Trammell v. Thurnmond*, 17—203.

(k) The certificate of the clerk of a court of record of another state, to the acknowledgment of the execution of a deed, is admissible as evidence without attestation of his official character by the judge of the court. *Ferguson v. Peden*, 33—150.

When an acknowledgment is taken before an officer having an official seal it should be authenticated by such seal. *Little v. Dodge*, 32—453.

The absence from a notary's seal of the emblems and devices required by the statute does not invalidate his certificate of the acknowledgment of a deed. *Sonfield v. Thompson*, 42—46.

Where there is in fact an appearance and acknowledgment of a deed in some manner, then the official certificate of acknowledgment is conclusive of every fact appearing on its face, and evidence of what passed at the time of the acknowledgment is inadmissible to impeach the certificate, except in case of fraud or imposition in obtaining the acknowledgment, and where knowledge or notice of the fraud or imposition is brought home to the grantee. *Meyer v. Gossett*, 38—377; *Holt v. Moore*, 37—148.

SEC. 656. The acknowledgment of deeds and instruments of writing for the conveyance of real estate, or whereby such real estate is to be affected in law or equity, shall be by the grantor appearing in person before such court or officer having the authority by law to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein mentioned and set forth (1).

SEC. 657. When any such deed or instrument is to be proven, it shall be done by one or more of the subscribing witnesses personally appearing before the proper court or officer, and stating on oath that he or they saw the grantor subscribe such deed or instrument of writing, or that the grantor acknowledged in his or their presence that he had subscribed and executed such deed or instrument for the purposes and consideration therein mentioned, and that he or they had subscribed the same as witnesses at the request of the grantor.

SEC. 658. If any grantor has not acknowledged the execution of any such deed or instrument, and the subscribing witnesses be dead or can not be had, it may be proved by the evidence of the handwriting of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the deposition of two or more disinterested persons swearing to each signature.

SEC. 659. The conveyance of any real estate by any married woman, or the relinquishment of dower in any of her husband's real estate, shall be authenticated and the title passed, by such married woman voluntarily appearing before the proper court or officer, and in the absence of her husband declaring that she had of her own free will executed the deed or instrument in question, or that she had signed the relinquishment of dower for the purposes therein contained, and set forth without compulsion or undue influence of her husband (m).

SEC. 660. All deeds and other instruments in writing for the conveyance of any real estate, or by which any real estate may be affected in law or equity, shall be proven or duly acknowledged in conformity with the provisions of this act before they or any of them shall be admitted to record.

SEC. 661. Every letter of attorney containing a power to convey any real estate as agent or attorney for the owner thereof, or execute as agent or attorney

(1) The acknowledgment must show that the deed was executed "for the consideration and purposes" therein expressed. The words "consideration" and "purposes" are both material, and if either is omitted, and no word of similar import is used, the acknowledgment is insufficient. See *Johnson v. Godden*, 33—600; *Martin v. O'Bannon*, 35—62; *Ford v. Burks*, 37—91; *Connor v. Abbott*, 35—365.

(m) The certificate of acknowledgment of a conveyance executed by husband and wife must state that the husband acknowledged that he had executed the deed for the consideration and purposes therein mentioned and set forth, and that the wife acknowledged that she had executed it for the purposes therein contained and set forth. *Little, trustee, v. Dodge, guardian, etc.*, 32—453.

Any substantial deviation from the form prescribed by the statute for the conveyance of real estate by married women will render the deed invalid. A substantial compliance with the statute must affirmatively appear from the certificate of acknowledgment. *Ib.* As to when the certificate of acknowledgment will be conclusive, see *Meyer v. Gossett*, 33—377; *Donahue v. Mills*, 41—421; note (k) *ante*. See also the following cases: *Wentworth v. Clark*, 33—432; *Shryock v. Cannon*, 39—434; *Chaffe v. Oliver*, *Ib.*, 531; *Stidham v. Mathews*, 29—650; *Beavers v. Baucum*, 33—722; *Stillwell v. Adams*, 29—346; *Magness v. Arnold*, 31—103; *Scott v. Ward*, 35—480; *Tubbs v. Gatewood*, 26—128.

To relinquish the wife's dower the conveyance must be of her own free will; she must understand the nature and effect of the deed, and in the absence of her husband declare to an officer authorized to take the acknowledgment, that the conveyance is without undue influence and for the purposes specified. *Russell v. Umphlet*, 27—339.

The certificate of acknowledgment must show that she executed the deed "without compulsion or undue influence of her husband." *Chaffe v. Oliver*, 39—531.

for another any deed or instrument in writing that shall convey any real estate, or whereby any real estate shall be affected in law or equity, shall be acknowledged or proven and certified and recorded with any deed that such agent or attorney shall make in virtue of such letter of attorney (*).

SEC. 662. Letters of attorney shall be proven or acknowledged before the same courts or officers that are authorized by this act to take probate of deeds conveying real estate.

SEC. 663. No letter of attorney, duly acknowledged or proved, and certified as prescribed by this act, shall be revoked but by the maker of such letter of attorney or his legal representatives, which revocation shall be in writing, acknowledged or proved before the proper court or officer, and filed for record in the county or counties where such letter of attorney was intended to operate—all such letters of attorney shall be revoked and deemed void from the time of filing such revocations for record.

SEC. 664. Every deed or instrument in writing conveying or affecting real estate which shall be acknowledged or proved and certified, as prescribed by this act, may, together with the certificate of acknowledgment, proof, or relinquishment of dower, be recorded by the recorder of the county where such land to be conveyed or affected thereby shall be situate, and when so recorded may be read in evidence without further proof of execution (n).

SEC. 665. If it shall appear at any time that any deed or instrument, duly acknowledged or proved and recorded as prescribed by this act, is lost or not within the power and control of the party wishing to use the same, the record thereof, or a transcript of such record certified by the recorder, may be read in evidence without further proof of execution.

SEC. 666. Neither the certificate of acknowledgment nor probate of any such deed or instrument, nor the record or transcript thereof, shall be conclusive, but may be rebutted. *Rev. Stat., chap. 31.*

SEC. 667. Where, by law, the commissioner of state lands is required to execute any deed of conveyance or patent for any lands sold or granted by the state, such deed of conveyance or patent, when executed by such commissioner under his official seal, shall convey all the right and title of the state in and to said lands to the purchaser, and may be recorded in the office of the recorder of the proper county, and the original, or a duly certified copy of the same, taken from the record thereof, shall have the same effect as evidence as if such deed or patent had been acknowledged and recorded under the existing laws of this state. *Act Dec. 31, 1850.*

SEC. 668. All deeds of conveyance made by administrators, executors, guardians and commissioners in chancery, and deeds made and executed by sheriffs (o) of real estate sold under executions, duly made and executed, acknowledged and recorded, as required by law, and purporting to convey real estate, shall vest in the grantee, his heirs and assigns, a good and valid title, both in law and in equity, and shall be evidence of the facts therein recited,

(*) Powers by which deeds are made must be recorded, or the record of the deed will not be notice to a subsequent purchaser from the party executing the power. *Jones v. Green*, 41—363.

(n) See *Simpson v. Montgomery*, 25—365.

The acknowledgment of the execution of a deed of conveyance, as required by the statute, does not alone authorize its introduction as evidence. It must also be filed and recorded or its execution proven at the trial. *Wilson and wife v. Spring*, 38—181; *Watson v. Billings*, *Id.*, 278; *Dorr v. School District No. 26, etc.*, 40—237.

(o) See *Hughes v. Watt*, 26—228.

and of the legality and regularity of the sale of the lands so conveyed until the contrary be made to appear.

SEC. 669. Every deed so made, executed, acknowledged and recorded, or a certified copy thereof, under the seal of the recorder of the proper county, shall be received in evidence without further proof of its execution. *Act Jan. 12, 1853.*

SEC. 670. Every deed, bond, or instrument of writing, affecting the title in law or equity to any property, real or personal, within this state, which is or may be required by law to be acknowledged, or proved and recorded, shall be constructive notice to all persons from the time the same is filed for record in the office of the recorder of the proper county; and it shall be the duty of such recorder to indorse, on every such deed, bond, or instrument, the precise time when the same is filed for record in his office.

SEC. 671. No deed, bond, or instrument of writing, for the conveyance of any real estate, or by which the title thereto may be affected in law or equity, hereafter made or executed, shall be good or valid against a subsequent purchaser of such real estate for a valuable consideration, without actual notice thereof; or against any creditor of the person executing such deed, bond, or instrument, obtaining a judgment or decree, which by law may be a lien upon such real estate, unless such deed, bond, or instrument, duly executed and acknowledged, or approved, as is or may be required by law, shall be filed for record in the office of the clerk and *ex officio* recorder of the county where such real estate may be situated (p).

SEC. 672. Nothing herein contained shall be construed to change, or in any manner affect, sections 4742, 4743 and 4744. *Act Dec. 19, 1846.*

DEFECTIVE RECORDING AND ACKNOWLEDGMENTS CURED.

SEC. 673. All deeds, bonds, mortgages or other conveyances of real estate, heretofore recorded, whether duly recorded or not, under the provisions of the law in force at the time of recording, shall not, after the passage of this act, be impeached for not being duly recorded, but shall have the same legal force and effect as if duly recorded in the first instance; saving, however, to all persons any lien or right, in law or equity, that such person may have prior to the passage of this act. *Act Jan. 5, 1843.*

SEC. 674. All conveyances or other instruments heretofore executed out of this state, under and by virtue of the "Chapters of the Digest," shall be held valid and binding as though the said "Chapters of the Digest" were in full force and effect at the time.

SEC. 675. The record of all such instruments shall be as valid as if the same had been acknowledged or executed according to law. *Act Feb. 25, 1873, secs. 5 and 6.*

SEC. 676. All conveyances heretofore made and executed in accordance with the so-called "Chapters of the Digest," shall be equally valid and bind-

(p) A deed for the conveyance of real estate, duly executed, etc., is good and valid against a creditor of the person executing such deed, obtaining a judgment, which, by law, is a lien on real estate, and also against a purchaser of such real estate at a judicial sale under the judgment; if actual notice of the deed be given to the purchaser and to the creditor, or his attorney of record, or if such deed be filed for record at any time before the sale, though not until after the judgment is rendered and execution levied upon the land. Such notice may be given at any time before or at the time of the sale under execution, and will be sufficient, though the deed be not produced. *Byers v. Engles*, 16—543. See same case as to what possession would be sufficient to put the purchaser upon inquiry. See note (f) *ante*.

ing as if made and executed according to the laws actually in force at the time of making and executing the same; and no such conveyance or other instrument heretofore executed out of this state, shall be held to be invalid because the same was acknowledged before the judge of any court or a notary public.

SEC. 677. The record of all such instruments shall be as valid as if the same had been acknowledged or executed according to law. *Act March 7, 1873, secs. 1 and 2.*

SEC. 678. All acknowledgments of relinquishments of dower heretofore taken, in accordance with the "Chapters of the Digest," shall be as valid and binding as though the said "Chapters of the Digest" were in full force and effect at the time that the same were taken.

SEC. 679. The record of all instruments acknowledged as aforesaid shall be as valid as if the same had been acknowledged according to law. *Act April 10, 1873, secs. 1 and 2.*

SEC. 680. All acknowledgments of deeds and other instruments of writing, taken before the clerk of any court of record within this state, from the tenth day of July, 1868, to the date of the passage of this act, are hereby legalized and declared valid to all intents and purposes. *Act April 7, 1873, sec. 2.*

SEC. 681. All conveyances or other instruments of writing affecting real estate, heretofore acknowledged or proven before a notary public out of this state, but within the United States, shall be held to be as valid and binding as if acknowledged or proven in pursuance of law. *Act Dec. 14, 1874.*

SEC. 682. All acknowledgments of deeds, mortgages and other instruments of writing, heretofore taken by judges of the county and probate courts in this state, are hereby declared to be as legal and binding as though such acknowledgments had been taken by an officer duly authorized by law to take the same. *Act March 6, 1877.*

SEC. 683. All deeds and other conveyances recorded prior to the first day of January, eighteen hundred and eighty-three, purporting to have been acknowledged before any officer, and which have not heretofore been invalidated by any judicial proceeding, shall be held valid to pass the estate which such conveyance purports to transfer, although such acknowledgment may have been on any account defective (excepting only cases where such conveyances shall have been executed by minors or insane persons). *Provided, that the record of all such instruments shall be as valid as if they had been acknowledged and recorded according to law. Act March 8, 1883, sec. 6.*

SEC. 684. All conveyances and other instruments of writing authorized by law to be recorded, or which have heretofore been recorded in any county in this state, the proof of execution whereof is insufficient because the officer certifying such execution omitted any words in his certificate, or because such officer failed or omitted to attach his seal of office to such certificate, or attached to any certificate any seal not bearing the words or devices required by law, or otherwise informal, shall be as valid and binding as though the certificate of acknowledgment or proof of execution was in due form and bore proper seal. *Act March 14, 1883.*

CHAPTER XXVIII.

CORONERS (*).

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SECTION 685. Every coroner shall within twenty days after he receives his commission enter into bond to the State of Arkansas in a sum not less than five thousand dollars, with good and sufficient security, to be approved as provided in section 4771, conditioned for the faithful discharge of his duties, which bond shall be filed and recorded in the recorder's office (**).

SEC. 686. If he shall fail to give such bond within the time prescribed in the preceding section, the office shall be deemed vacant, and the county clerk shall immediately notify the governor thereof.

SEC. 687. He shall be a conservator of the peace, and shall cause all offenders against the law, in his view, to enter into recognizance with security to keep the peace, and to appear at the next term of the circuit court of the county.

SEC. 688. He shall quell and suppress all riots, affrays and assaults and batteries, and he shall apprehend and commit to jail all felons and traitors.

SEC. 689. Every recognizance taken by a coroner shall be returned to the clerk of the circuit court of his county on or before the first day of the next term after taking the same.

SEC. 690. The coroner shall execute and return all process of whatever nature the same may be, where the sheriff is a party, and in all cases where just exceptions can be taken to the sheriff or his deputy, or where there is no sheriff (a).

(*) For election and term of office of coroner, see sec. 46, art. VII, Const.

(**) See chap. 112.

(a) See SECS. 4975, 5314.

SEC. 691. In all cases, upon affidavit filed with the clerk of the circuit court, or any other court of record, of the partiality, prejudice or consanguinity of the sheriff or deputy sheriff of any county where suit is brought or to be brought, or shall have been commenced, the clerk shall issue and direct the original or other process in the suit to the coroner, who shall execute the same, and attend to the suit throughout in the same manner as the sheriff should do in like cases.

SEC. 692. If any person die in prison, or if any person be slain, or die an unnatural death, except by the sentence of the law, or if the dead body of any person be found, and the circumstances of the death be unknown, information shall be immediately given to the coroner of the county.

SEC. 693. The coroner, on the receipt of any such information, shall summon, without delay, not less than twelve nor more than twenty-three persons of his county, qualified to serve as jurors, to appear at the place where the body lies, and if twelve do not appear, he shall summon others, until that number do appear.

SEC. 694. When the requisite number of jurors appear, the coroner shall administer the following oath: "You do solemnly swear that you will diligently inquire into the time, cause, manner and circumstances of the death of the person whose body lies before you, and that you will thereupon make presentment of the truth, the whole truth, and nothing but the truth, that shall come to your knowledge; so help you, God."

SEC. 695. After the coroner and jurors shall have viewed the body, they shall proceed to inquire into the cause, manner and circumstances of the death.

SEC. 696. The coroner shall cause to come before the jurors all suspected persons who can be taken, and all proper witnesses, and all proper means shall be used to ascertain the truth.

SEC. 697. All suspected persons may be examined, and their voluntary declarations taken, without threats or promises, and reduced to writing, and read to the respective persons examined, and be signed by them, if willing.

SEC. 698. The testimony of each witness, if material, shall be reduced to writing, and read to and signed by the witness.

SEC. 699. Such examinations and testimony shall be certified and signed by the coroner, and in case of the death of a witness, his deposition shall be evidence on the trial of any person present at his examination (b).

SEC. 700. At least twelve of the jurors shall agree to the inquisition.

SEC. 701. Such inquisition may be according to the following form:

STATE OF ARKANSAS, }
County of ———. }

An inquisition, taken the — day of —, 18—, at —, in said county of —, before —, coroner of said county, upon the view of the dead body of (here insert the name of the deceased, if known, or, if unknown, a description of the person, by his apparent age, size, clothes, etc., etc.), by the oaths of (here insert the jurors' names), good and lawful jurors of said county,

(b) When the deposition, subscribed and certified as the statute requires, is in existence and attainable, oral evidence of its contents can not be admitted. *Dunn v. State*, 2—229.

Oral evidence is admissible to prove what a witness testified at a coroner's inquest, if his testimony was not reduced to writing. *Nelson v. State*, 32—192. But the minutes kept by a coroner of an inquest held by him are not competent evidence. The facts contained in them should be proved by the testimony of the coroner. *Bass v. State*, 29—142.

who, being in due form sworn, say that the said —— came to his death (here insert the time, cause, manner and circumstances of the death as found).

In testimony whereof, as well the said coroner as the said jurors, have hereunto set their hands, the day and year first aforesaid.

SEC. 702. The coroner shall have power to summon witnesses, and, in case of their neglect to appear pursuant to the summons, to arrest them and compel their attendance. He may also issue subpoenas for, and attachments for contempt against, witnesses, directed to the constable of any township in the county.

SEC. 703. It shall be the duty of the coroner, on probable cause, supported by oath, that a person has committed murder or manslaughter, to arrest such person and safely keep him for examination.

SEC. 704. If it be found by any inquisition that the death of the deceased was caused by the act, abetment, procurement or command, or counsel of any person, such person shall not be bailable by the coroner, unless it appear by the inquisition that it was a case of excusable homicide, or of manslaughter (c).

SEC. 705. It shall be the duty of the coroner to apprehend every such person, if not under arrest, unless it appears by the inquisition to be a case of excusable homicide, and, if necessary, he shall issue his warrant under his hand, directed to any constable of the county, grounded on such inquisition, for the apprehension of any person accused therein.

SEC. 706. Such warrant may be in the following form :

STATE OF ARKANSAS, }
County of ——.

The State of Arkansas to the constable of any township in said county of —— :

It having been found by an inquisition taken the —— day of ——, 18—, before ——, coroner of the county aforesaid, upon view of the body of ——, that the said —— came to his death (here set forth the time, cause, manner and circumstances, as in the inquisition): You are therefore commanded to take the before-named ——, wheresoever he may be found, and bring —— before the said coroner, to be dealt with according to law.

Witness the hand of said coroner, the —— day of ——, 18—.

_____, Coroner.

SEC. 707. A person arrested under such warrant desiring to give bail shall, upon his request, be taken before some person authorized to take bail, in the county in which he was arrested, to be bailed if the case be bailable (d).

SEC. 708. The coroner shall have power to commit any person for trial who may have been arrested by him, or who may be brought before him by virtue of any warrant issued by him.

SEC. 709. Such commitment shall be by warrant, under his hand, and may be according to the following form :

STATE OF ARKANSAS, }
County of ——.

The State of Arkansas to the sheriff of said county :

It having been found by (proceed as in the foregoing warrant to the words, "You are therefore commanded," and then proceed), we herewith send to you

(c) A justice of the peace has no power to admit to bail, in capital offenses, murder or manslaughter. SEC. 2035.

(d) See *Bass v. State*, 29—142.

the before-named ———, and command you to receive him and safely keep him for trial or until he shall be discharged according to law.

Witness the hand of the said coroner, the — day of ———, 18—.

SEC. 710. The coroner shall have authority to take recognizance of bail, and he shall admit to bail any person who may be brought before him, or who may be in his custody, who is charged with a bailable offense, and offers sufficient bail; and recognizance of bail may be taken in the following form:

Be it known, that, on the ———, one thousand eight hundred and ———, before ———, coroner of the county aforesaid, came ———, of ———, in their proper persons, and acknowledged themselves to be jointly and severally bound to the State of Arkansas in the sum of — dollars, to be paid to the state; and agreed that the said sum be levied of their goods and chattels, lands and tenements, respectively, for the use of the state, upon condition that if the said ——— shall appear before the next circuit court, which shall be held in and for the county of ———, in the state aforesaid, to answer to all things that shall be objected against him, and shall not depart the said court without leave, then the above recognizance shall be void.

SEC. 711. Such recognizance shall be signed by the recognizers and be attested by the coroner.

SEC. 712. The coroner shall require each witness who may have been examined before any inquest, whose testimony he may deem material, to enter into recognizance to the state to appear at the proper court and give evidence.

SEC. 713. An entry in the following form shall be a sufficient recognizance: "I am bound in recognizance to the State of Arkansas in the sum of ——— dollars, to appear at the next term of the circuit court in and for the county of ———, to give evidence on behalf of the state against ———. Dated the ——— day of ———;" which shall be signed by the witness and attested by the coroner.

SEC. 714. Such recognizance shall be conclusive evidence to support an action, and any number of witnesses may sign the same; and it shall be conclusive evidence against each as a separate recognizance.

SEC. 715. The coroner may require a witness to find security in his recognizance, and on his failure may commit him.

SEC. 716. The coroner shall deliver every inquisition, with all the examinations, depositions and recognizances concerning the case to the clerk of the circuit court of his county on or before the first day of the term of the court, after taking the same, who shall immediately lay the same before the prosecuting attorney.

SEC. 717. If any person summoned by any coroner to appear for the purpose of being impaneled in any inquest as aforesaid shall fail to appear, or refuse to serve, such coroner shall have power to issue an attachment for contempt against him, directed to any constable of the county, and the coroner may order such person to pay the costs of the attachment and a fine not exceeding ten dollars, and may enforce obedience to such order by imprisonment.

SEC. 718. If a body on which an inquisition ought to have been held be interred without an inquisition, the coroner may cause the body to be disinterred, to hold an inquisition thereon.

SEC. 719. If any person shall cause a body, on which an inquisition ought to be held, to be buried without an inquisition, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars.

SEC. 720. In case of the absence of the coroner, or if he reside more than twenty miles from the place where any person may be found dead, as described in this act, the inquisition may be taken by the nearest justice of the peace, who shall have full power and authority to do and perform all things required of a coroner. *Rev. Stat., chap. 31.*

SEC. 721. Whenever an inquest, as required by law, is held on the body of any convict in the penitentiary, the coroner or officer holding such inquest shall present an itemized bill of the fees and costs of the inquisition to the auditor, and if said bill be found just, the auditor shall draw his warrant on the treasurer for the amount in favor of the coroner; and it shall be the duty of the coroner to pay over to the jurors, and other parties, the fees and costs belonging to them. *Provided*, no inquest shall be held on the body of any convict, unless it be recommended by the physician of the penitentiary. *Act March 9, 1877.*

CHAPTER XXIX.

CORPORATIONS (*).

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 II. CORPORATIONS FOR MANUFACTURING AND OTHER LAWFUL BUSINESS.—
 Sec. 960.
 III. NAVIGATION COMPANIES.—Sec. 992.
 IV. INSTITUTIONS OF LEARNING.—Sec. 1002.
 V. BUREAUS OF IMMIGRATION.—Sec. 1013.
 VI. CORPORATIONS FOR BENEVOLENT PURPOSES—FAIR ASSOCIATIONS, ETC.—
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I.—MUNICIPAL CORPORATIONS (a).

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(*) See art. XII, Const.

For general law for incorporation of railroad companies, see chap. 125.

For powers of trustees of religious societies, see chap. 127.

(a) See art. XII, secs. 3, 4, 5, Const.

As to the nature, powers, liabilities, etc., of municipal corporations generally, see *State v. Jennings*, 27—419; *Mayor, etc., of Helena v. Thompson*, 29—569; *Town of Jacksonport v. Watson*, 33—704; *City of Little Rock v. Barton*, *Ib.*, 436; *Brodie v. McCabe*, *Ib.*, 690; *Trammell v. Town of Russellville*, 34—105; *Halbut v. Forrest City*, *Ib.*, 246; *Taylor, Cleveland & Co., v. City of Pine Bluff*, *Ib.*, 603; *Pugh v. City of Little Rock*, 35—75; *City of Little Rock v. Willis*, 27—572.

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CLASSIFICATION.

SECTION 722. In respect to the exercise of certain corporate powers, and to the number, character, powers and duties of certain officers, municipal corporations are divided into the classes following: Cities of the first, and cities of the second class, and incorporated towns.

SEC. 723. All cities which, at the last federal census, had, or now have, a population exceeding five thousand inhabitants, shall be deemed cities of the first class.

SEC. 724. All cities which, at any future federal census, or at any census which may be taken in pursuance of the laws of this state, shall be found to have a population of five thousand inhabitants, shall thereafter be deemed cities of the first class.

SEC. 725. Any incorporated town which, at any future federal census, or at any census taken under the authority of the state, as aforesaid, shall be found to have a population exceeding twenty-five hundred and less than five thousand inhabitants, shall hereafter be deemed a city of the second class.

SEC. 726. It shall be the duty of the governor, auditor and secretary of state, or any two of them, to ascertain from the federal census, and census provided for by law of this state, as aforesaid, what cities of the second class are entitled to become cities of the first class, and what incorporated towns are entitled to become cities and their proper class; and the governor shall cause a statement thereof to be prepared and transmitted to the mayor of such city or town, stating the grade to which the same has been advanced.

SEC. 727. The governor, auditor and secretary of state may declare incorporated towns cities of the second class, and cities of the second class cities of the first class, between the periods herein fixed, upon application from any incorporated town or city of the second class, accompanied by a resolution adopted by such town or city council, asking to be so declared a city of the first or second class, as the case may be; which said application shall be accompanied with satisfactory evidence showing the population of such town or city to be large enough to entitle them to such advancement.

SEC. 728. So soon as such statement shall have been received by the mayor, as provided in the preceding section, showing that any city or town will be entitled at the next regular annual period for the election of municipal officers, to be organized into a city of the first or second class, as the case may be, it shall and may be lawful for the proper corporate authority of such city or incorporated town to make and publish such by-laws or ordinances as shall be necessary to perfect such organization in respect to the election, duties and compensation of such officers, or otherwise.

SEC. 729. All corporations which existed when the present constitution took effect for the purpose of municipal government, and described or denominated in any law then in force, are hereby organized into cities of the first and second class, as the case may be, and incorporated towns, with the territorial limits to them respectively prescribed or belonging (b).

SEC. 730. All municipal corporations having over five thousand inhabitants shall be deemed cities of the first class. All cities having twenty-five hundred inhabitants, and less than five thousand inhabitants, shall be deemed cities of the second class; all others shall be incorporated towns, and shall be governed respectively by the provisions of this act. All acts now in force for the organization or government of any such municipal government or corporation shall be, and they are hereby, repealed. *Provided*, that such repeal shall not destroy or bar any right or property, action or prosecution, which may be vested or exists at the time this act takes effect (c).

SEC. 731. The corporate authority of cities organized, or to be organized,

(b) See *City of Little Rock v. Parish*, 36—166; *State v. Leatherman*, 38—87.

(c) See *Babcock v. City of Helena*, 34—499.

shall be vested in one principal officer, to be styled the mayor, one board of aldermen, to be styled the city council, together with such other officers as are mentioned in this act, or may be created under its authority.

POWERS BELONGING TO CITIES OF THE FIRST AND SECOND CLASS.

SEC. 732. The city council shall have power to establish a board of health, with jurisdiction for one mile beyond the city limits; and for quarantine purposes, in case of epidemic, five miles; to invest it with such powers and impose upon it such duties as shall be necessary to secure the city and the inhabitants thereof from the evils of contagious and malignant and infectious diseases; to provide for its proper organization and the election or appointment of the necessary officers, and to make such by-laws, rules and regulations for its government and support as shall be required for enforcing the prompt and efficient performance of its duties and the lawful exercise of its powers.

SEC. 733. They shall have power to establish a city watch or police; to organize the same under the general superintendence of the mayor; prescribe its duties and define its powers in such manner as will most effectually preserve the peace of the city, secure the citizens thereof from personal violence, and their property from fire and unlawful depredations.

SEC. 734. They shall establish or organize fire companies and provide them with proper engines and such other instruments as shall be necessary to extinguish fire and preserve the property of the city and of the inhabitants from conflagration, and shall provide such by-laws and regulations for the government of the same as they shall deem expedient; and each and every person who shall belong to any such fire company, shall, in time of peace, be exempt from the performance of military, road, street and jury duty under the laws of this state.

SEC. 735. They shall erect, establish and regulate the markets and market places for the sale of vegetables and other articles necessary for the sustenance, convenience and comfort of the city and the inhabitants thereof. They shall have power to prescribe the times of opening and closing the same, the kind and description of articles that may be sold therein, and the stands or places to be occupied by the venders.

SEC. 736. They may have full power to prevent forestalling, to prohibit or regulate huckstering in the markets, and to adopt such rules and regulations as are necessary to prevent fraud, and to preserve order in the market. They may authorize the immediate seizure, arrest and removal from any market of any person or persons violating its regulations, as established by ordinance, together with any article in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions. But no charge or assessment of any kind shall be made or levied in any manner against any farmer or producer of vegetables or provisions in bringing the same to any market in any city, for standing in or occupying a place, with or without horses and wagon used in bringing such produce to the market, in any of the market spaces of such city, or in the streets contiguous thereto, on market days and evenings previous thereto. *Provided, however,* that nothing contained in this section shall be so construed as to authorize the city council of any city to pass an ordinance for the purpose of assessing or imposing any fine or punishment

whatever upon any farmer or producer for selling at any time, within the city, any article of provision or vegetables, to any person or persons, in any street or streets, or market spaces, during market hours.

SEC. 737. The city council shall have the care, supervision and control of all the public highways, bridges, streets, alleys, public squares and commons within the city; and shall cause the same to be kept open and in repair, and free from nuisance.

SEC. 738. No street or alley, which shall hereafter be dedicated to public use by the proprietor of ground in any city, shall be deemed a public street or alley, or to be under the care or control of the city council, unless the dedication shall be accepted and confirmed by an ordinance specially passed for that purpose.

SEC. 739. They shall have the power, in cities of the first class, to prescribe by ordinance the width of the tire of all wagons, carts, drays and other vehicles used in transportation of persons, or articles from one part of the city to another, or in the transportation of coal, wood, stone, lumber or iron into the city; to establish stands for hackney-coaches, cabs and omnibuses, and enforce the observance and use thereof, and to fix the rates and prices for the transportation of persons and property in such coaches, cabs and omnibuses from one part of the city to another.

SEC. 740. The city council shall have power to establish and construct, and to regulate landing places, levees, wharves, docks, piers and basins, and to fix the rates of landing, wharfage and dockage, and to use, for the purposes aforesaid, any public landing or any property belonging to or under the control of the city.

SEC. 741. The city council shall have the use and control, for the above purpose, of the shore or bank of any lake or river, not the property of individuals, to the extent and in the manner that the state can grant such use or control.

SEC. 742. The city council shall have the power to appoint, or to provide that the qualified voters shall elect harbor-masters, wharf-masters, port-wardens and other officers usual or proper for the regulation of the navigation, trade, or commerce of such city; to define their duties and powers, and to fix their fees and compensation.

SEC. 743. Copies of the examination and surveys, and of the proceedings of any port-warden in the usual discharge of the duties of such office, certified under his hand, shall be *prima facie* evidence of the facts therein stated.

SEC. 744. The city council shall have power to provide that, when a fine shall be imposed for the violation of any of the ordinances of the city and the same is not paid, the party convicted shall, by order of the mayor or other proper authority, or on process issued for the purpose, be committed until such fine and costs of prosecution shall be paid, or the party discharged by due course of law.

SEC. 745. They shall also have power to provide that any person convicted of a repeated and willful violation of any ordinance, who shall refuse or neglect to pay the fine imposed and the cost of prosecution, by like order or process, shall be imprisoned and kept in confinement for any term not exceeding thirty days.

SEC. 746. They shall have power to provide that all vagrants, common street beggars, common prostitutes, and persons disturbing the peace of the city, shall, on conviction thereof, be punished by fine or imprisonment not exceeding thirty days.

SEC. 747. Any city shall be allowed, for the purpose of imprisonment authorized under this act, the use of the county jail of the proper county, and all persons so imprisoned shall be under the charge of the sheriff of the county, who shall receive and discharge such persons in such manner as shall be prescribed by the ordinances of the city, or otherwise, by due course of law.

SEC. 748. The city council may, at its discretion, by ordinance, provide that fines imposed for violation of ordinances may be discharged by the offender working out the same upon the streets or alleys of the towns, at the rate of one dollar per day, and may adopt all necessary regulations for the safe-keeping, management and control of offenders while working out such fines.

GENERAL POWERS OF CITIES AND TOWNS.

SEC. 749. Cities or incorporated towns, organized or to be organized under the provisions of this act, shall be, and are hereby declared to be bodies politic and corporate, under the name and style of "the city of ———," or "the incorporated town of ———," as the case may be; capable to sue and be sued, to contract and be contracted with, to acquire, hold and possess property, real and personal; to have a common seal, and to change and alter the same at pleasure, and to exercise such other powers and to have such other privileges as are incident to other corporations of like character or degree, not inconsistent with the provisions of this act or the general laws of the state.

SEC. 750. All municipal corporations organized or to be organized under the provisions of this act, shall have general powers and privileges, and be subject to the rules and restrictions of this act prescribed. *Act March 9, 1875, secs. 1-11.*

SEC. 751. They shall have power to prevent injury or annoyance within the limits of the corporation from anything dangerous, offensive or unhealthy, and to cause any nuisance to be abated within the jurisdiction given to the board of health in section 732; to regulate the transportation and keeping of gunpowder, dynamite and other combustibles, and to provide or license magazines for the same; to prevent and punish fast or immoderate riding of horses, or the driving or propelling of vehicles through the streets; to establish and regulate markets; to provide for the measuring or weighing of hay, wood, or any other article for sale (d); to regulate the transportation of articles throughout the streets, and to prevent injury to the streets from overloaded vehicles; to prevent cruelty to animals; to prevent any riots, noise, disturbance or disorderly assemblages; to regulate drumming or soliciting persons who arrive on trains, or otherwise, for hotels, boarding houses, bath houses or doctors; to license such drummers, and to provide that each drummer shall wear a badge plainly exposed to view, showing for whom and for what he is drumming or

(d) A city has the power to pass and enforce by proper penalties an ordinance "to provide for the measuring or weighing of hay, wood or any other article for sale," within its limits; but if such ordinance be unreasonable or directed to the end of raising a revenue, chancery will declare it void. *Taylor, Cleveland & Co. v. City of Pine Bluff, 34—603.*

soliciting patronage, and to punish by fine any violation of this provision; to license, regulate, tax or suppress ordinaries, hawkers, peddlers, brokers (e), pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, sparring exhibitions, dance houses, fortune tellers, pistol galleries, corn doctors, lock, private and venereal hospitals, museums and menageries, equestrian performances, horoscopic views, lung testers, muscle developers, magnifying glasses, billiard tables or any other tables or instruments used for gaming (f), theatrical or other exhibitions, shows and amusements, tippling houses and dram shops (g); or any gift enterprises, and to suppress prize fighting, dog fights, chicken cock-fights, gaming or gambling houses, and to regulate or suppress bawdy or disorderly houses, houses of ill-fame or assignation (*). *Provided*, the city or town council shall not grant a license to any tippling house, dram shop or saloon, or permit such houses, shops or saloons to carry on such business in any ward of the city, or any incorporated town, when at the previous election a majority of the votes cast were against license in such ward of the city, or incorporated town (h), or where an order prohibiting the sale or giving away of any vinous, spirituous or intoxicating liquors of any kind, or alcohol, or any compound or preparation thereof commonly called tonics or bitters, has been made in accordance with the provisions of section 4524. *Ib.*, sec 12, as amended by act March 8, 1883.

SEC. 752. They shall have power to regulate the building of houses; to make regulations for the purpose of guarding against accidents by fire, and to prohibit the erection of any building, or any addition to any building, more than ten feet high, unless the outer walls thereof be made of brick or mortar, or of iron, or stone and mortar; and to provide for the removal of any building or additions erected contrary to such prohibition (i).

SEC. 753. They shall have power to provide a supply of water by the construction and regulation of wells, pumps, cisterns, reservoirs or water-works; to prevent the unnecessary waste of water; to prevent the pollution of the water and injury to the water-works; and for the purpose of establishing or supplying water-works, any municipal corporation may go beyond its territorial limits; and its jurisdiction to prevent or punish any pollution or injury to the stream or source of water, or to the water-works, shall extend five miles beyond its corporate limits.

SEC. 754. They shall have power to provide for lighting the streets and alleys of the city by gas or otherwise, and to authorize the construction of gas-works and of street railroads.

SEC. 755. For the purpose of providing water, gas or street railroads, the mayor and council may contract with any person or company to construct and operate the same, and may grant to such person or company for the time which

(e) A dealer in real estate for others is a broker, and, under this section, may be required to pay a license for following the occupation within the limits of an incorporated city or town. *City of Little Rock v. Barton*, 33—436.

(f) A city ordinance licensing the exhibiting of a gaming table or gambling device is void. *State v. Lindsey*, 34—372.

(g) See *Tuck v. Town of Waldron*, 31—462; *Siloam Springs v. Thompson*, 41—456.

(*) As to power to condemn an act or thing as a nuisance, see *Ward v. City of Little Rock*, 41—526.

(h) See SECS. 4513—4515.

(i) Under this section a town council has power to prohibit the erection of wooden buildings in certain districts of the town as a precaution against fire; and if such building be erected in violation of an ordinance inhibiting it, the council may promptly remove it without any prosecution or judicial proceedings of any kind against the owner of the building. *McKibben v. Fort Smith*, 35—332.

may be agreed upon the exclusive privilege of using the streets and alleys of such city for such purpose or purposes.

SEC. 756. They shall have the power to regulate the burial of the dead; to provide without the corporate limits of the corporation places for the interment of the dead, and to prevent any such interment within any such limits, except in public burying grounds established before the adoption of this act. They may not only impose proper fines and penalties, but shall also have power to cause any body, interred contrary to such prohibition, to be taken up and buried without the limits of the corporation.

SEC. 757. They shall have the power to restrain and regulate the running at large of cattle, horses, swine, sheep and other animals within the limits of the corporation; to authorize the distraining, impounding and sale of the same, for any penalty imposed by any ordinance or regulation, and all costs of the proceeding; to prevent the running at large of dogs, and injuries and annoyances therefrom, and to authorize the destruction of the same, when at large, contrary to any prohibition to that effect.

SEC. 758. They shall have the power to license, regulate or prohibit all theatrical exhibitions and public shows, and all exhibitions of whatever name or nature. *Provided*, that lectures on science, historical or literary subjects shall not be included within the provisions of this section; to regulate or prohibit the sale of all horses, or other domestic animals at auction in the streets, alleys or highways; to regulate (*) all carts, wagons, drays, hackney coaches, omnibuses and ferries, and every description of carriages which may be kept for hire, and all livery stables; to regulate hotels and other houses for public entertainment, and to regulate or to prohibit ale and porter shops or houses, and public places of habitual resort for tippling and intemperance, and to declare what are such. *Ib.*, secs. 13-17.

SEC. 759. They may levy and collect a tax of not less than five nor more than one hundred dollars per annum from each and every public auctioneer who may follow his occupation in said cities or incorporated towns. *Act Dec. 14, 1875.*

SEC. 760. They shall have power to lay off, open, widen, straighten and establish, to improve and keep in order and repair, and to light streets, alleys, public grounds, wharves, landing places and market places; to open and construct and keep in order and repair sewers and drains (j); to enter upon, or take, for such of the above purposes as may be required, land or material, and to assess and collect a charge on the owner or owners of any lot or land, or on lots or lands through or by which a street, alley or public highway shall pass, for the purpose of defraying the expenses of constructing, improving, repairing or lighting such street, alley or public highway, to be in proportion to the value of such lot or land as assessed for taxation under the general law of the state.

SEC. 761. Each municipal corporation may, either by general or special by-laws or ordinance, prescribe the mode in which the charge on the respective owners of lots or land, and on the lots or land, shall be assessed and determined

(*) The power to regulate drays, etc., includes the power to license as a means of regulation, and to require a fee as the cost of license. Such fee must be reasonable, and not imposed for the sole or main purpose of revenue. *Fort Smith v. Ayers*, *Ms. Op.*, 1884; *Russellville v. White*, 41-485.

(j) See *City of Little Rock v. Willis*, 27-572; *Simmons v. City of Camden*, 26-276; *Mayor, etc., of Helena v. Thompson*, 29-569.

for the purpose authorized by the provisions of this act; such charge, when assessed, shall be payable by the owner or owners, at the time of the assessment, personally, and shall also be a lien on the respective lots or parcels of land in the possession of any owner, from the time of assessment.

SEC. 762. Municipal corporations shall have power to cause any lot or lots of land within their limits, on which, or part of which, water shall at any time become stagnant, to be raised up or drained, and to cause all putrid substance, whether animal or vegetable, to be removed from any lot or lots; and may, for such purpose, from time to time direct that such lot or lots be raised, filled up or drained, or that such putrid substance be removed from such lot or lots by the owner or owners thereof respectively, in such reasonable time and in such manner as may be directed by a resolution, by-law or ordinance of said city or town council; and, in case of failure or refusal to do so, it may be done at the expense of such municipal corporation, and the amount of money so expended shall be a debt due to said corporation, from the owner or owners of such lot or lots; and shall, from the time of the adoption of the resolution, by-law, or ordinance, be a lien on such lots.

SEC. 763. The amount of the lien provided for in the three preceding sections may be determined by action against the owner or owners of any lot or lots, and the amount thus ascertained, with cost of suit and five per centum penalty for collection, shall be by the mayor certified to the clerk of the county, and by him placed on the tax-book as delinquent taxes, and collected accordingly, and the amount, when so collected, shall be paid to the city by the county collector.

SEC. 764. Municipal corporations shall have power to make and publish, from time to time, by-laws or ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers or duties conferred by the provisions of this act (k), and it is hereby made the duty of the municipal corporation to publish such by-laws and ordinances as shall be necessary to secure such corporations and their inhabitants against injuries by fire, thieves, robbers, burglars and other persons violating the public peace; for the suppression of riots, and gambling, and indecent and disorderly conduct; for the punishment of all lewd and lascivious behavior in the streets and other public places; and they shall have power to make and publish such by-laws and ordinances, not inconsistent with the laws of this state (l), as to them shall seem necessary to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of such corporations and the inhabitants thereof (m).

SEC. 765. By-laws and ordinances of municipal corporations may be enforced by the imposition of fines, forfeitures and penalties, on any person offending against or violating such by-laws or ordinances, or any of them; and the fine, penalty or forfeiture, may be prescribed in each particular by-law or ordinance, or by a general by-law or ordinance made for that purpose; and

(k) The Constitution (sec. 28, art. VII), did not abrogate the jurisdiction of municipal courts to try and punish vagrancy. *Brizzolari v. State*, 37—364.

(l) See art XII, sec. 4, Const.

(m) The general powers conferred in this section do not enlarge the special powers conferred in Sec. 751. *Tuck v. Town of Waldron*, 31—462.

municipal corporations shall have power to provide in like manner for the prosecution, recovery and collection of such fines, penalties and forfeitures.

SEC. 766. Municipal corporations shall not have power to inflict any fine or penalty, by ordinance or otherwise, to a greater sum than twenty-five dollars for any one specified offense or violation of such by-law or ordinance, or double that sum for each repetition of such offense or violation.

SEC. 767. If a thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the by-laws or ordinance, shall not exceed fifteen dollars for each day that the same may be unlawfully continued.

SEC. 768. If any by-law or ordinance provide for any greater fine, penalty or forfeiture than is herein provided, it shall and may be lawful, in any suit or prosecution for the recovery thereof, to reduce the same to such amount as shall be deemed reasonable and proper, and to permit a recovery or render a judgment for such amount as this act authorizes.

SEC. 769. Fines, penalties and forfeitures may in all cases, and in addition to any other mode provided, be recovered by suit or action before any court of competent jurisdiction, in the name of the proper municipal corporation and for its use; and, in such suit or action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due, in respect to the by-law or ordinance, referring to its title and the date of its adoption or passage, and showing, as near as may be, the true time of the alleged violation.

SEC. 770. All suits or prosecutions for the recovery of any such fines, penalties or forfeitures, or for the commission of any offense made punishable by any by-law or ordinance of any municipal corporation, shall be commenced within one year after the violation of the by-law or ordinance, or commission of the offense, and not afterwards. *Provided*, that the offender has remained within the jurisdiction of such municipal corporation during the one year aforesaid, if not, then the limitation herein provided shall extend for the term of five years.

SEC. 771. The printed copies of the by-laws and ordinances of any municipal corporation, published under its authority, and transcripts of any by-law, ordinance or of any act or proceeding of any municipal corporation, recorded in any book or entered on any minutes or journal, kept under the direction of such municipal corporation, and certified by its clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes or journal, would be received with as much effect (n).

SEC. 772. It shall be the duty of the clerk or recorder to furnish such transcript to persons demanding the same, and he shall be entitled to charge therefor at the same rate that the clerk of the county and circuit court is entitled to charge for transcripts for such courts.

SEC. 773. All by-laws or ordinances shall, as soon as may be after their passage, be recorded in a book kept for that purpose, and be authenticated by the signature of the presiding officer of the council and the clerk; and all by-laws or ordinances of a general or permanent nature, and of those imposing any fine, penalty or forfeiture, shall be published in some newspaper of general

(n) See *Halbut v. Forrest City*, 34—246. Parol evidence is not admissible to prove an ordinance or resolution of a city council. The ordinance or resolution itself, or a certified copy of it, must be produced. *Pugh v. City of Little Rock*, 35—75.

circulation in the corporation. *Provided*, that in incorporated towns where no newspaper is published, written or printed notices posted up in five of the most public places in said corporation shall be deemed a sufficient publication of any law or ordinance for incorporated towns; and it shall be deemed a sufficient defense to any suit or prosecution for such fine, penalty or forfeiture, to show that no such publication was made.

SEC. 774. On the passage of every by-law or ordinance, resolution or order, to enter into a contract, by any council of any municipal corporation (o), the yeas and nays shall be called and recorded (p); and to pass any by-law or ordinance, resolution or order, a concurrence of a majority of a whole number of members elected to the council shall be required.

SEC. 775. All appointments of officers by any council shall be made *viva voce*, and the concurrence of a like majority shall be required; the names of those voting, and for whom they voted, on the votes resulting in the appointment, shall be recorded, and all such voting shall be public.

SEC. 776. No street or highway shall be opened, straightened or widened, nor shall any other improvement be made which will require proceedings to condemn private property, without the concurrence in the by-law, ordinance or resolution, directing the same, of two-thirds of the whole number of members elected to the council; and a concurrence of a like majority shall be required to direct any improvement or repair of a street or highway, the cost of which is to be assessed on the owners of the property, unless one-half of the owners to be charged shall petition in writing therefor.

SEC. 777. All rights and property of every kind and description, under its former organization, shall be deemed and held to be vested in the same municipal corporation under the organization prescribed by this act; and no rights or liabilities, either in favor of or against such corporation, existing at the time of the taking effect of this act, and no suit or prosecution of any kind, shall be in any manner affected by such change, but the same shall stand or progress as if no such change had been made. *Provided*, that where a different remedy is given in this act, which can properly and without manifest inconvenience to the party, plaintiff or defendant, be made applicable to any rights existing at the time of its passage, the same shall be deemed cumulative to the remedies before provided, and may be used accordingly.

SEC. 778. Any municipal corporation, in which, under its former organization, by any law or charter regulating any literary, charitable or benevolent institution, was vested any power of appointing officers of supervision or control, shall continue to hold and possess the like power and authority in every respect.

SEC. 779. All officers heretofore elected by the people or appointed by any municipal corporation now in office, and recognized by this act, shall remain and continue in their respective offices, and perform the several duties thereof, under the provisions of this act, until their successors shall be chosen, or appointed, and qualified in the manner provided for in this act.

SEC. 780. All laws, ordinances, resolutions, or orders, heretofore lawfully passed and adopted by the city or town council, not inconsistent with the con-

(o) As to proof of contracts by municipal corporations, see *Halbut v. Forrest City*, 34—246.

(p) Unless the yeas and nays be called and recorded on the passage of an order or resolution of the council for making a contract it will be void. *Cutler v. Town of Russellville*, 40—105.

stitution or laws of this state, shall be, remain and continue in force until altered or repealed by the city council.

SEC. 781. All special acts in relation to any municipal corporation, repealed by section 730, shall, notwithstanding, so far as the same affects the particular police regulations or local affairs of any municipal corporation, in matters not inconsistent with the provisions of this act, be and remain in force as by-laws and ordinances of the particular corporation, until altered or repealed by the city or town council.

SEC. 782. If the owner or possessor of any lot or land in any city or incorporated town in this state shall dig, or cause to be dug, any cellar, pit, vault, or excavation, to a greater depth than twelve feet below the curb of the street on which said lot or land abuts, or, if there be no curb, below the surface of the adjoining lots, and shall, by such excavation, cause any damage to any wall, house or other building upon the lots adjoining thereto, the said owner or possessor shall be liable, in a civil action, to the party injured, to the full amount of the damage aforesaid. *Provided, however,* that such owner or possessor may dig, or cause to be dug, any such cellar, pit or excavation, to the full depth of any foundation walls of any building upon the adjoining lots, and to the full depth of twelve feet below the grade of the street whereon such lot abuts, established by the corporate authority, without incurring the liability prescribed by this section. *Act March 9, 1875, secs. 18-34.*

IMPROVEMENT OF STREETS, ALLEYS, ETC.

SEC. 783. In order to better provide for the improvement of the streets, alleys, sidewalks and public grounds of municipal corporations, the city council or board of aldermen of any such corporation shall have power, whenever in their opinion the interests of the corporation require it, by ordinance, to direct and require that any, or all, male persons between the ages of eighteen and forty-five, resident within the limits of such corporation, shall be liable and subject to street duty performable by work and labor in or upon the streets, alleys, sidewalks or public grounds inside the limits of such corporation, under the supervision and direction of such officer as the city council or board of aldermen may direct; and to prescribe the notice and the manner of service thereof by which the person or persons so liable shall be warned or summoned for the performance of such duty, and shall have full power to punish any failure, refusal or neglect to perform such duty on the part of any person so warned or summoned; and shall also have the power to provide in what manner and upon what terms exemption from such duty may be obtained. *Provided,* that no person shall be liable to more than ten days of such duty in one year, nor for a longer period than three days at any one time; and *provided,* that persons who live in such corporations shall not be liable to work on any public roads outside thereof.

SEC. 784. For the purpose of carrying into full effect and operation the power and authority in this act conferred, the city council or board of aldermen shall have full power to pass all such by-laws or ordinances as to them may seem just and proper, and to punish violations of the same. *Act March 10, 1879.*

INCORPORATION AND ORGANIZATION OF INCORPORATED TOWNS (q).

SEC. 785. When the inhabitants of a part of any county, not embraced within the limits of any city or incorporated town, shall desire to be organized into a city or town, they may apply by petition, in writing, signed by the inhabitants so applying, to be in number not less than twenty qualified voters, to the county court of the proper county, which petition shall describe the territory proposed to be embraced in such incorporated town, and have annexed thereto an accurate map or plat thereof; shall state the name proposed for such incorporated town, and shall also name the person or persons authorized to act in behalf of the petitioners in prosecuting said petition. When any such petition shall be presented to the court, they shall cause the same to be filed in the office of the county clerk, to be there kept, subject to the inspection of any person or persons interested, until the time appointed for the hearing thereof. The said court shall, at or before the time of such filing, fix and communicate to such petitioners or their agent, a time and place for the hearing of such petition, which time shall not be less than thirty days after the filing of such petition, and thereupon the petitioners or their agent shall cause a notice to be published in some newspaper of general circulation in the county, not less than three consecutive weeks; and, if there be no newspaper of general circulation in the county, a notice shall be posted at some public place within the limits of said proposed incorporated town for at least three weeks before the time of such hearing, which notice shall contain the substance of said petition, and state the time and place appointed for the hearing thereof.

SEC. 786. Every such hearing shall be public, and may be adjourned from time to time, and any person interested may appear and contest the granting the prayer of said petition; and affidavits in support of or against said petition, which may be prepared and submitted, shall be examined by said court, and they may, in their discretion, permit the agent or agents named in the original petition to amend or change the same, except no amendment shall be permitted, whereby territory not before embraced shall be added, or the character of the proposed incorporated town changed from special to general, or from general to special, without appointing another time for hearing, and requiring new notice to be given as above provided.

SEC. 787. If the county court shall be satisfied, after hearing such petition, that at least twenty qualified voters reside therein, or within the limits described by said petition, and that said petition has been signed by them; that said limits have been accurately described, and an accurate map or plat thereof made and filed (r); that the name proposed for the said town is proper and sufficient to distinguish it from others of like kind in the state, and it shall, moreover, be deemed right and proper, in the judgment and discretion of the court, that said petition shall be granted, then it shall make out and indorse on said petition an order, to the effect that the incorporated town as named and described in the petition may be organized, which order said court shall

(q) Long acquiescence and continued recognition by the state will cure the illegal creation of a municipal corporation. *State v. Leatherman*, 38—81.

(r) Whether a municipal corporation has definite boundaries, and what they are, is for the courts and not the legislature to determine. *City of Little Rock v. Parish*, 36—166.

sign and deliver, together with the petition and the map or plat, to the recorder of the county, whose duty it shall be to record the same as soon as may be in the proper book of records, and to file and preserve in his office the original papers, having certified thereon that the same have been properly recorded; and it shall also be the duty of said recorder to make out and certify under his official seal two transcripts of said record, one of which he shall forward to the secretary of state, and the other he shall deliver to the agent or agents of said petitioners, with a certificate thereon that a similar transcript has been forwarded to the secretary of state as provided by this section.

SEC. 788. As soon as said record shall be made, and said transcript certified, forwarded and delivered, the inhabitants within the limits described in the petition, shall be deemed an incorporated town, to be organized and governed under the provisions of this act in like manner as if specially named therein, and so soon as said incorporated town shall be actually organized, by election of its officers as hereinafter provided, notice of its existence as such shall be taken in all judicial proceedings in the state.

SEC. 789. One month shall elapse from the time such transcripts are forwarded and delivered, before notice shall be given of an election of officers in such incorporated town, and any person interested may, at any time within the said one month, make complaint in writing, in the nature of an application for an injunction to the circuit court, or the judge thereof in vacation, having given at least five days' notice thereof, and furnished a copy of the complaint to the agent or agents of the petitioners, for the purpose of having the organization of such proposed incorporated town prevented.

SEC. 790. It shall be the duty of the court or judge to hear such complaint in a summary manner, receiving answers, affidavits and proofs, as may be deemed pertinent; and if it shall appear to the satisfaction of the court or judge that the proposed incorporated town does not contain the requisite number of inhabitants, or that a majority of them have not signed the original petition, or that the limits of said proposed incorporated town are unreasonably large or small, or are not properly and sufficiently described, then the said court or judge shall order the record of said incorporated town to be annulled; and it shall be the duty of the county recorder to indorse on the record the order so made, and to certify and transmit to the secretary of state a copy thereof, and thereupon the record shall be of no effect, but such proceeding shall in no manner bar a subsequent petition to the county court, on the same subject, by complying with the provisions of this act.

SEC. 791. Unless the agent or agents of the petitioners shall, within thirty days after a transcript shall be delivered as hereinbefore provided, be notified of a complaint having been made to the circuit court of the county, or a judge thereof, then at the end of said thirty days, and in case of any such complaint then at the end of thirty days after the dismissal of said complaint, the said agent or agents shall give public notice, by posting the same at three or more public places within the limits of said incorporated town, of the time and place of holding the first election for officers of said incorporated town, which election shall be conducted and the officers elected and qualified in the manner prescribed by law in like cases. *Provided*, that if said election shall be held at any other time than that prescribed by law for the regular election of such officers, the officers elected shall continue in office so long and in like

manner as if they had been elected at the next preceding period of such regular election.

SEC. 792. The corporate authority of incorporated towns organized, or to be organized for general purposes, shall vest in one mayor, one recorder and five aldermen, who shall be qualified electors residing within the limits of the corporation, and shall hold their office for one year and until their successors are elected and qualified, and such mayor, recorder and aldermen shall constitute the council of the incorporated town, any five of whom shall be a quorum for the transaction of business.

SEC. 793. The mayor, or, in case of his absence, the recorder, shall preside at all meetings of the council. The recorder shall also be and act as clerk of the corporation, and shall attend all meetings of the council, and make a fair, accurate and correct record of all their proceedings, laws, rules and ordinances, made and passed by the council, and the same shall, at all times, be open for the inspection of the electors of the corporation. *Act March 9, 1875, secs. 35-42.*

SEC. 794. Whenever the mayor of an incorporated town or city of the second class is unable to perform the functions of his office, or is absent and can not be obtained, the recorder of said incorporated town or city of the second class shall be authorized and empowered to perform the functions of a magistrate during the disability or absence of said mayor, with all the power and jurisdiction of said mayor, to all intents and purposes whatever. *Act March 30, 1883.*

SEC. 795. The council shall have power to fill vacancies which may happen in their board from the qualified electors of the corporation, who shall hold their appointments until the next annual election and until their successors are elected and qualified; and, in the absence of the mayor and recorder from any meeting of the council, the council shall have power to appoint any two of their number to perform the duties of mayor and recorder for the time being.

SEC. 796. The council of any incorporated town shall have power to provide by law or ordinance for the election of a treasurer, marshal and such subordinate officers as they may think necessary for the good government of the corporation; to prescribe their duties and compensation, or the fees they shall be entitled to receive for their services; to require of them an oath of office, and bond with surety for the faithful discharge of their duty. The period for the election of any officer shall be fixed at the time of the regular annual election, and no appointment of any officer shall endure beyond the period of the term of office of the council making the appointment, and one week after the qualification of the members of the succeeding council.

SEC. 797. The mayor of the corporation shall be a conservator of the peace throughout its limits, and shall have within the same all the power and jurisdiction of a justice of the peace in all matters, civil or criminal, arising under the laws of the state, to all intents and purposes whatever; and, for crimes and offenses committed within the limits of the corporation, his jurisdiction shall be co-extensive with the county; he shall give bond and security in any amount to be determined and approved by the council; and the mayor shall perform all duties required of him by the laws and ordinances of the corporation, and appeals may be taken in the same manner as from decisions of justices of the peace; he shall keep a docket and shall charge and collect

the same fees that justices of the peace are or may be allowed for similar services. *Act March 9, 1875, secs. 43-45.*

SEC. 798. The town marshal of incorporated towns shall be the principal ministerial officer of the corporation and shall have the same power that sheriffs have by law, and his jurisdiction shall be co-extensive with the county for offenses committed within the limits of the corporation. He shall execute the process of the mayor and collect the same fees for his services that sheriffs are allowed in similar cases, and it shall be the duty of the marshal of incorporated towns to suppress all riots and disturbances and breaches of the peace, to apprehend all disorderly persons in the town and to pursue and arrest any person fleeing from justice in any part of the state, apprehend any person in the act of committing any offense against the laws of the state or ordinances of the town and forthwith to bring such persons before the mayor, or other competent authority, for examination or trial. He shall have power to appoint one or more deputies, for whose official acts he shall be responsible, and all persons or parties arrested by any officer of the state for violation of any town ordinance shall be turned over to the town marshal and shall be by him taken before the proper authorities for investigation. *Ib., sec. 46, as amended by act March 26, 1883.*

SEC. 799. By the concurrent vote of five members of the council the mayor, recorder, or any other member of the council, or any officer of the corporation, may be removed from office, but no such removal shall be made without a charge in writing being made and an opportunity of hearing being given, unless the officer against whom the charge is made shall have removed out of the limits of the corporation; and when any officer shall cease to reside within the limits of the corporation, it shall be deemed a good ground for a removal from office. *Ib., sec. 47.*

CITIES OF THE SECOND CLASS.

SEC. 800. The qualified voters of the cities of the second class shall on the first Tuesday in April, in the year eighteen hundred and eighty-five, and every year thereafter, elect one mayor and two aldermen from each ward as members of the city council. The mayor of cities of the second class shall have within the limits of the same all the jurisdiction and power of a justice of the peace in all matters, civil or criminal, arising under the laws of this state, to all intents and purposes whatever, and for crimes and offenses committed within the limits of the corporation his jurisdiction shall be co-extensive with the county; he shall give bond and security in any amount to be determined and approved by the city council; he shall have exclusive jurisdiction of all prosecutions for violation of any ordinance of the city; he may award and issue any process or writs that may be necessary to enforce the administration of justice throughout the city, and for the lawful exercise of his jurisdiction according to the usages and principles of law, and he shall, in the discharge of the duties of a justice of the peace, receive the same fees and compensation as may be allowed them by law. The city council of all cities of the second class now having one or more wards may divide such city into such number of wards as said council may determine, not exceeding five, before the time of the first election provided for by this act, and each of said wards shall at such first election be entitled to two aldermen. *Ib., sec. 48, as amended by act March 8, 1883.*

SEC. 801. The qualified voters of each city of the second class shall, at the same time, elect a city marshal, city recorder and treasurer. Each of said officers shall continue in office until his successor is elected and qualified, and shall have such powers and perform such duties as are prescribed in this act, or as may be prescribed by any ordinance of such city, not inconsistent with the provisions of this act. *Ib.*, sec. 49, as amended by act Feb. 28, 1881.

SEC. 802. The marshal of cities of the second class shall execute and return all writs and process to him directed by the mayor, and, in criminal cases or cases of a violation of a city ordinance, he may serve the same in any part of the county; it shall be his duty to suppress all riots and disturbances and breaches of the peace, to apprehend all disorderly persons in the city, and to pursue and arrest any person fleeing from justice in any part of the state; to apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city, and forthwith to bring such persons before the mayor, or other competent authority, for examination or trial; he shall have power to appoint one or more deputies, for whose official acts he shall be responsible; he shall, in the discharge of his proper duties, have like powers, be subject to like responsibilities, and shall receive the like fees as sheriffs and constables in similar cases. *Ib.*, sec. 50.

CITIES OF THE FIRST CLASS.

SEC. 803. The qualified voters of cities of the first class shall, on the first Tuesday in April, in the year 1875, and every two years thereafter, elect one mayor and two aldermen from each ward, as members of the city council, one city treasurer and one police judge, all of whom, except the aldermen, shall hold their offices for the term of two years, and until their successors are elected and qualified, and shall have such powers and perform such duties as are required by this act, or may be prescribed by any ordinance of the city not inconsistent with this act, and which may not be incompatible with the nature of their respective offices.

SEC. 804. All officers provided for in this act, and by ordinance of any city under this act, shall receive such salary as the council of any city may designate, and shall in no instance receive an additional compensation by way of fees, fines or perquisites, but all such fees, fines or perquisites shall be paid into the city treasury.

SEC. 805. The aldermen shall be residents of their respective wards, and when they shall have organized, as hereinafter provided, they shall proceed to determine by lot the time of service of each alderman so elected, so that one of the aldermen of each ward shall serve for the term of two years, and the other for one year; and at every succeeding general election to be held therein one alderman shall be elected by the qualified voters of said ward, who shall possess the qualifications hereinbefore required, and whose term of service shall be two years, so that the terms of two aldermen of each ward shall always expire on different years, and the persons thus chosen shall hold their offices until their successors are elected and qualified.

SEC. 806. The aldermen elected for each city shall annually, on the next Monday after their election, assemble and organize the city council; a majority of the whole number of aldermen shall be necessary to constitute a quorum

for the transaction of business. They shall be judges of the election, returns and qualifications of their own members. They shall determine the rules of their proceedings and keep a journal thereof, which shall be open to the inspection and examination of any citizen, and may compel the attendance of absent members in such manner and under such penalties as they shall think fit to prescribe.

SEC. 807. The mayor shall be *ex officio* president of the council, and shall preside at its meetings during the term for which he shall have been elected, and in case of a tie he shall have the casting vote. In the absence of the mayor the council shall elect a president *pro tempore*. They shall also appoint from the qualified voters of the city a city clerk, who shall have the custody of all the laws and ordinances of the city, and shall keep a regular and correct journal of the proceedings of the council, and shall be required to submit, quarterly, a full report and a detailed statement of the financial condition of said city or town, showing receipts, disbursements and balance on hand, together with all liabilities of said city or town; the report to be submitted to the city council in open session. Treasurers and collectors shall be required to make similar reports, and shall perform such other duties as may be required by the ordinances of the city. The clerk in office at the expiration of the term of service of any council shall continue in office until his successor shall be appointed and qualified.

SEC. 808. The chief of police shall execute all process to him directed by the mayor, and shall, by himself or some one of the police force, attend on the sitting of said court to execute its orders and preserve order therein. He shall have power to appoint one or more deputies from the police force, for whose official acts he shall be responsible, and by whom he may execute all process directed to him. He shall have power, by himself or deputy, to execute all such process in any part of the county in which said police court is situated. It shall be his duty to suppress all riots, disturbances and breaches of the peace, and to that end he may call upon the citizens to assist him to apprehend all persons in the act of committing any offense against the laws of the state or the ordinances of the city, and them forthwith to bring before the proper authority for examination or trial. He shall have power to pursue or arrest any person fleeing from justice in any part of the state, and to receive and execute any proper authority for arrest and detention of criminals fleeing or escaping from any other place or state. He shall have, in the discharge of his proper duties, like powers, be subject to like responsibilities as sheriffs and constables in similar cases, and shall be required by the city council to give a bond for the faithful performance of his duties, in such sum as said city council may require.

SEC. 809. The city council shall by general ordinance direct the number of subordinate officers of the police and watchmen to be appointed. The duty of the chief and other officers of the police and of the watchmen shall be under the direction of the mayor, and it shall be their duty to suppress all riots, disturbances and breaches of the peace; to pursue and arrest any person fleeing from justice in any part of this state; to apprehend any and all persons in the act of committing any offenses against the laws of the state or the ordinances of the city, and forthwith bring such person or persons before the proper authority for trial or examination, and at all times to diligently and

faithfully enforce all such laws, ordinances and regulations for the preservation of good order and the public welfare as the city council may ordain, and for such purpose they shall have all the power of constables.

SEC. 810. The mayor, police or watchmen of the city may, upon view, arrest any person or persons who may be guilty of a breach of the ordinances of the city, or of any crime against the laws of the state, and may upon reasonable information, supported by affidavit, procure process for the arrest of any person or persons who may be charged with a breach of any ordinance of the city.

SEC. 811. The mayor shall have power to suspend any officers provided for in this section for neglect of duty, misconduct or other sufficient cause, and appoint other persons to fill their places during the pendency of the trial of the accused by the city council.

SEC. 812. The mayor shall hold his office during the term for which he shall have been elected, and until his successor shall have been elected and qualified. He shall keep an office at some convenient place in the city, to be provided by the city council, and shall keep the corporate seal of the city in his charge. In case of his death, disability, resignation, or other vacation of his office, the city council may, by a vote of a majority of all its members, appoint some other person to act until the expiration of said term or disability, if the unexpired term of his office is less than six months; otherwise, an election shall be ordered in accordance with the laws of the state. A removal from the city shall be deemed a vacation of his office. The mayor of the city shall be its chief executive officer and conservator of its peace, and it shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed. He shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction. He shall have and exercise the power conferred on sheriffs, within the city limits, to suppress disorder and to keep the peace. He shall perform such other duties compatible with the nature of his office as the council may from time to time require. He shall receive no salary.

SEC. 813. He shall at the second regular meeting of the city council in each year, and at such other times as he shall deem expedient, report to the city council the municipal affairs of the city, and recommend such measures to them as to him may seem advisable.

SEC. 814. The police judge shall preside over the police court, and perform the duties of judge thereof, and shall have jurisdiction over all cases of misdemeanor arising under this act, and all ordinances passed by the city council in pursuance thereof. In the case of the disability or unavoidable absence of the police judge, it shall be the duty of the council of cities of the first-class to secure some justice of the peace of the township in which said city is situated to act as police judge during such absence or disability, who shall have power to act as such judge during the time aforesaid, and shall receive such compensation for such services as may have been previously agreed on.

SEC. 815. The city council shall have power to erect, establish and maintain a city prison, which shall be in the keeping and under the control of the chief of police, under such rules and regulations as the city council may prescribe. The city council shall provide one or more watch-houses or stations

and shall also provide suitable rooms for holding the police court. It shall be the duty of the keeper of the city prison, watch and station-houses to provide all persons confined therein for any offense with necessary food during their confinement, and the cost thereof, not exceeding thirty cents per day to each person, shall be taxed as costs in the case and paid to the keeper of the prison, watch or station-house out of the city treasury, on the certificate of the chief of the police and approval of the mayor, when audited by the city council.

SEC. 816. The police court shall always be open for the dispatch of business; but may adjourn from day to day, or from time to time, and the mode in which cases shall be brought before the court shall be fixed by ordinance of the city council, or a rule of the police court, not in conflict with the laws of this state; the jurors of said court shall have the qualifications of jurors in the circuit court, and shall be summoned and impaneled in accordance with an ordinance of the city or order of the court, not inconsistent with the laws of the state; and shall have power to compel the attendance of witnesses, jurors and parties.

SEC. 817. The police judge shall adopt such rules of practice and procedure as will give parties a proper statement of any charge against them and opportunity of being heard, but shall, at the same time, dispatch the business with convenient speed, and all rules of the court shall be written or printed and posted in the room in which the police court holds its sittings; and whenever it shall become apparent to the judge of the police court that the party arrested and on trial before him is guilty of an offense against the state only, it shall be his duty to transfer the case, with all the papers, to some justice of the peace, and to order such party to be turned over to the custody of the sheriff or constable, to be dealt with according to law. Said police judge shall be clerk of his own court, and shall have the care and custody of all papers, books and records belonging to his court.

SEC. 818. The judge of the police court shall, on the first day of every month, or within three days thereafter, account under oath for all penalties, fines and forfeitures imposed by said court, in city cases, to the city council, and shall pay into the city treasury the amount thus received by him.

SEC. 819. Witnesses and jurors in the police court shall be allowed the same fees in cases arising from a violation of an ordinance as are allowed in similar cases before a justice of the peace, and which shall be paid in the same manner.

SEC. 820. Any final conviction or sentence of the police court may be examined into by the circuit court of the county in the manner provided by law regulating appeals from justices of the peace, and proceedings may be stayed on such terms as may be reasonable; such police judge shall thereupon return all matters of record or on file touching the proceedings, or a transcript thereof, and any facts which may have been noted by the judge, or certified in the nature of a bill of exceptions at the time of trial, which it shall be the duty of the judge, on request of the party, to do; and on such return the circuit court shall make such order as right and justice may require, and may either discharge the party, set aside the conviction or order a new trial; but no such conviction or sentence shall be set aside or disregarded for want of any technical averment that any matter or thing is within its jurisdiction.

SEC. 821. Every police court shall have a seal, and shall be deemed a court of record; said seal shall be provided by the city council, with the name of the state in the center and the words "*Police Court*" around the margin.

SEC. 822. Each city council shall cause to be provided for its clerk's office a seal, in the center of which shall be the name of the city and around the margin the words "*City Clerk*," which seal shall be affixed to all transcripts, orders or certificates which it may be necessary or proper to authenticate under the provisions of this act, or of any by-law or ordinance of the city. For all attested certificates and transcripts, other than those ordered by the council, the same fees shall be paid as are allowed county clerks for similar services.

SEC. 823. The city council shall possess all the legislative powers granted by this act, and other corporate powers of the city not herein prohibited, or by some ordinance of the city council made in pursuance of the provisions of this act and conferred on some officer of the city; they shall have the management and control of finances, and of all the property, real and personal, belonging to the corporation; they shall provide the times and places of holding their meetings, which shall at all times be open to the public; and the mayor, or any three aldermen, may call special meetings in such manner as may be provided by ordinance; they shall appoint or provide by ordinance that the qualified voters of the city, of the wards or districts, as the case may require, shall elect all such city officers as shall be necessary for the good government of the city and for the due exercise of its corporate powers, and which shall have been provided by ordinance, as to whose appointment or election provision is not herein made and not provided by any general law of the state in reference to cities of the first class. All city officers whose term of office is not prescribed, and whose powers and duties are not defined in this act, by-law or ordinance, shall perform such duties, exercise such powers and continue in office two years, unless sooner removed for cause; but all officers to be elected shall be elected at the regular annual election for municipal corporations.

SEC. 824. Any member of the city council may be expelled or removed from office by a concurrent vote of two-thirds of all the aldermen elected to the city council, but not a second time for the same cause. Any officer appointed by the city council may be removed from office by a concurrent vote of a majority of the whole number of aldermen elected to the city council. Any officer elected by a vote of the city, or any ward or district, may be removed from office by a concurrent vote of two-thirds of all the aldermen elected to the city council. Provision shall be made by ordinance as to the mode in which charges shall be preferred and a hearing shall be had. In all cases of vacancy in the city council, the same shall be filled by a special election; and in case any office of an elected officer, except alderman of the ward, shall become vacant before the expiration of the regular term, then the vacancy shall be filled by the city council until a successor is duly elected and qualified, and such successor shall be elected for the unexpired term at the first annual election that occurs after the vacancy shall have happened. *Ib.*, secs. 51-63.

ASSESSING PROPERTY FOR LOCAL IMPROVEMENTS IN CITIES OF THE FIRST CLASS (*).

SEC. 825. The council of any city of the first class may assess all real property within such city, or within any district thereof, for the purpose of grading or otherwise improving streets and alleys, constructing sewers or making any local improvements of a public nature, in the manner hereinafter set forth (†).

SEC. 826. When any ten resident owners of real property in any such city, or of any portion thereof, shall petition the city council to take steps toward the making of any such local improvement, it shall be the duty of the council to at once lay off the whole city, if the whole of the desired improvement be general and local in its nature to said city, or the portion thereof mentioned in the petition, if it be limited to a part of said city only, into one or more improvement districts, designating the boundaries of such district so that it may be easily distinguished; and each district, if more than one, shall be designated by number and by the object of the proposed improvement.

SEC. 827. Within five days after the designation of such district or districts, the clerk of said city shall publish the order or ordinance of the council establishing the district, in some newspaper published in said city, for one insertion.

SEC. 828. If within three months after the publication of any such ordinance a majority in value of the owners of real property within such district adjoining the locality to be affected shall present to the council a petition praying that such improvement be made, which petition shall designate in precise terms the nature of the improvement to be undertaken, and that the cost thereof be assessed and charged upon the real property situated within such district or districts, the city council shall at once appoint three persons, residents of the district, and owners of real property therein, who shall compose a board of improvement for the district.

SEC. 829. Each member of the board shall, within ten days after his appointment, take the oath of office required by section twenty of article nineteen of the constitution of this state, and that he will not, either directly or indirectly, be interested in any contract made by the board; which oath shall be filed in the office of the city clerk.

SEC. 830. If any member of the board shall fail to take such oath, and to file the same in the office of the clerk of the city within the time allowed herein, he shall be taken to have declined the office, and the council shall at once appoint another person, having the like qualifications, in his place, who shall take and file his oath of office within ten days after his appointment.

SEC. 831. The board shall elect one of their number chairman. Vacancies that may occur after the board shall have been organized shall be filled by the remaining member or members; but if all the places on the board shall become vacant, or those appointed shall, after qualification, refuse or neglect to act, new members shall be appointed by the council, as in the first instance. The members of the board shall receive no compensation for their services.

SEC. 832. Where there is more than one district in the city for the same

(*) See art. XIX, sec. 27, Const.

(†) This act is constitutional. *City of Little Rock v. Board of Improvements, etc.*, 42—152.

general purpose, the same member may be on two or more boards, or the boards of different districts may combine so as to form only one board for the whole territory to be thus improved, so as to make the whole improvement uniform; but no money raised by assessment in one district shall be expended in another district.

SEC. 833. A majority of said board shall constitute a quorum for the transaction of business, and the performance of the duties enjoined by this act.

SEC. 834. Immediately after their qualification the board shall form plans for the improvement within their district as prayed in the petition, and shall procure estimates for the cost thereof; but all such improvements shall be made with reference to the grades of streets and alleys as fixed, or may be fixed, by the ordinances of said city. For this purpose said board may employ such engineers and other agents as may be needful, and may provide for their compensation, which, with all other necessary expenditures, shall be taken as a part of the cost of the improvement. If, for any cause, the improvement shall not be made, said cost shall be a charge on the real property in the district, and shall be raised and paid by assessment in the manner hereinafter prescribed.

SEC. 835. The words "real property," whenever used in this act, shall have the same meaning and signification as are attached to said words in the act providing for the collection of state, county and city revenue.

SEC. 836. As soon as said board shall have formed said plan and shall have ascertained the cost of the improvement, it shall report the same to the city council, which shall at once by ordinance assess said cost upon the real property in said city or district, as the case may be, assessing each parcel of real property according to its value as shown by the last county assessment on file in the office of the county clerk.

SEC. 837. If the estimated cost of the improvement shall exceed one per centum of the assessed value of the real property aforesaid, then it shall be provided by ordinance that the assessment shall be paid in successive annual installments, so that no assessment shall in any one year exceed one per centum of the assessed value of said real property for such particular improvement. The ordinance shall fix the day in each year when the assessment for the year shall be paid, and the day fixed for the payment of the first installment shall not be later than sixty days from the date of the ordinance making the assessment. *Provided*, that no single improvement shall be undertaken which alone will exceed in cost twenty per centum of the value of such real property in such district.

SEC. 838. Said ordinance may be in the following form:

"Whereas, the majority in value of the property holders owning property adjoining the locality to be affected and situated in district No. —, organized for the purpose of —, have petitioned the council of the city of — for the construction of such improvement, and that the cost thereof should be assessed upon the real property of such district, and, whereas, the estimated cost of said improvement is — dollars, amounting to — per centum of the assessed value of the said real property; therefore, it is now ordained by the said council that all the real property situated in said district be assessed at the rate of — per centum upon the dollar of the assessed valuation, as the same appears by the assessment made by the assessor of this county, now on

file in the county clerk's office, which assessment shall be paid on or before the — day of — 18—."

And such assessment shall be a charge against and a lien on the lands named therein from the date of said ordinance.

SEC. 839. Within five days after the passage of the ordinance mentioned in the last section of this act the clerk shall publish a copy of it in some newspaper published in the city, one time; and any one who may feel aggrieved thereby may object to the assessment; and such person shall commence legal proceedings for the purpose of trying the validity of said assessment within twenty days after the date of said publication, or else he shall be forever barred in all courts of law or equity from questioning the validity of the assessment and the lien created thereby.

SEC. 840. Immediately after the passage of the ordinance the city clerk shall procure, at the expense of the district, a copy of so much of the last assessment of said city made by the county assessor as contains the description and valuation of the real property situated in the district, and shall extend against each parcel of real property thereon the assessment so made, and shall deliver it, with his warrant thereto attached, to the collector of the district within thirty days after the passage of the ordinance, which warrant may be in the following form:

"State of Arkansas to the collector of district No. —, for the purposes of —, in the city of —:

"You are hereby commanded to collect from the owners of property described in the annexed list the assessments thereon extended, and to pay them to the treasurer of the district within sixty days from this date.

"Witness my hand and official seal on this — day of —, 18—."

SEC. 841. The collector shall immediately upon the receipt of the said tax list cause to be published in some newspaper published in the city a notice, which may be in the following form:

"Special Assessment.

"The tax book for the collection of the special assessment upon the real property in district No. — for the purpose of — has been placed in my hands. All owners of real property lying in the district are required to pay their assessments to me within thirty days from this date. If such payment is not made, action will be commenced at the end of that time for the collection of said assessments and for legal penalties and costs.

"Given under my hand this — day of —, 18—.

"—, Collector."

SEC. 842. If in the construction of sidewalks or making other improvements any owner of taxable property in the district shall be found to have improved his own property in such manner that his improvement may be profitably made a part of the general improvement of the kind in the district, being also as good as that required by the system determined upon by said board, the board of improvement shall appraise the value of the improvement made by the owner, and shall allow its value as a set-off against the assessment against his property. And in case the owner who has made such improvements shall be found to have failed to come up to the required standard, the board may allow him the value of the materials thereof, so far as the

same may be profitably used in perfecting the system aforesaid, as a set-off against the assessment against his property thus improved. In such cases the board shall issue to the owner a certificate showing the amount of the set-off allowed, which certificate shall be received by the collector in lieu of money for the amount named therein charged against said property.

SEC. 843. If any assessment, made under this act, shall not be paid within the time mentioned in the notice published by the collector, the collector shall add thereto a penalty of twenty per centum, and shall at once return a list of the property on which the assessments have not been paid to the board of improvement as delinquent; and the board shall straightway cause a complaint in equity to be filed in the court having jurisdiction of suits for the enforcement of liens upon real property, for the condemnation and sale of such delinquent property for the payment of said assessment, penalty and costs of suits; in which complaint it shall not be necessary to state more than the fact of the assessment and the non-payment thereof within the time required by law, without any further statement of any step required to be taken by the council, or the board, or any other officer whatever, concluding with a prayer that the delinquent property be charged with the amount of such assessment, penalty and costs of suit, and be condemned and sold for the payment thereof.

SEC. 844. It shall not be necessary to exhibit with the complaint any copy of any ordinance or other document or paper connected with the assessment and collection of the moneys assessed under this act.

SEC. 845. It shall be no objection to any suit brought for said purpose, that the lands of two or more owners are joined in the same proceeding, and such suits may be brought against one or more owners.

SEC. 846. The owner of the property assessed shall be made a defendant if known; if he is not known, that fact shall be stated in the complaint, and the suit shall proceed as a proceeding *in rem* against the property assessed.

SEC. 847. Summons shall be issued, and the defendant shall be required to appear and respond within five days after service; and upon default a decree shall be rendered against such property for the amount of such assessment, penalty and cost, and an attorney's fee.

SEC. 848. If the sheriff, or other officer, to whom the writ may be directed, shall return that the defendant is not to be found in his county, or if the owner is stated in the complaint to be unknown, service shall be made by affixing a copy of the summons to the property assessed, or to some part thereof, for fifteen days, and by publishing a copy of the summons in some daily or weekly paper, published in the city, for one insertion, and the cause shall be made ready for hearing within fifteen days after such publication, and a decree shall be rendered as in case of actual service.

SEC. 849. For the purpose of taking every step in such suits, as are referred to in section 843 from the beginning to the end thereof, the court shall be always open; and all cases brought under this act shall have precedence of all other cases pending in the court, and shall be decided within thirty days after service or publication.

SEC. 850. The publication shall be made by the officer having the writ for service, and shall be shown by his return.

SEC. 851. If the decree is in favor of the board, and for the condemnation of the land, it shall be for the penalty and costs of suit, as well as for the amount of the assessment.

SEC. 852. The suit shall be brought in the name of the board of improvement, and, in its decree of condemnation, the court shall direct that if the sum adjudged shall not be paid within ten days, the property shall be sold by a commissioner, appointed for that purpose, upon twenty days' notice. *Provided*, that only so much of the property shall be sold as will pay the assessment, costs and penalty, and no more.

SEC. 853. No allowance to the commissioner, for his services, shall exceed five dollars for each lot, block or part of a block of land sold, and certificate made by him.

SEC. 854. The commissioner shall execute to the purchaser a certificate of purchase, in which shall be stated the whole sum paid by the purchaser.

SEC. 855. The owner may redeem from the purchaser at any time within one year after the sale, by paying him the amount paid by him, with twenty per centum thereon; which redemption shall be noted upon the margin of the decree by the purchaser.

SEC. 856. If the purchaser can not be found, the owner may redeem by paying the amount to the clerk of the court wherein the decree is rendered, who shall then note the redemption, as aforesaid; and the clerk shall hold the redemption money subject to the order of the said purchaser, free of charge or commission, and pay over the same on demand; and if such redemption money be not called for within twenty days, the clerk shall advertise the receipt of the same by a notice, inserted one time, in some newspaper published in the city.

SEC. 857. If within the period allowed for redemption the purchaser pay any other assessment, or tax, lawfully levied upon the property, the owner, on making redemption, shall repay the same to the purchaser, with twenty per centum added thereto.

SEC. 858. If any appeal be taken from any such decree as is mentioned in sections 847, 851, 852, the supreme court shall advance the cause on its docket, and shall hear and decide the cause at as early a day as practicable. Said transcript shall be filed in the office of the clerk of the supreme court, within twenty days after the rendering of the decree appealed from.

SEC. 859. The supreme court shall either affirm or reverse the decree appealed from; or render such a decree as should have been rendered by the lower court, or shall remand the cause to the inferior court without delay.

SEC. 860. In taking such appeal the appellant shall only include in the transcript so much of the record as relates to his own lands.

SEC. 861. No appeal shall be prosecuted from any decree after the expiration of the twenty days herein granted for filing the transcript in the clerk's office of the supreme court.

SEC. 862. The board of improvement shall appoint the collector and treasurer of the district, who shall take the oath of office required by section 829, and shall execute bond to the chairman of the board, each in a sum at least equal to twice the amount of moneys which will probably come to their hands, with good and sufficient security, to be approved by the board, conditioned that they will faithfully discharge the duties of their office, and account for

and pay over all moneys that may come to their hands, according to law; and the orders of the board of improvements for the district for which they are appointed.

SEC. 863. The same person may be treasurer or collector of one or more of the districts in the city, but the moneys of the different districts shall be kept separately.

SEC. 864. The collector shall pay over to the treasurer, on the first of each month, all moneys received by him, deducting therefrom three per centum for his services, and shall take duplicate receipts therefor, one of which he shall file with the board.

SEC. 865. The treasurer shall pay out no moneys save upon the order of the board, and upon a warrant signed by the chairman thereof. He shall be allowed a commission of one per centum on all sums by him lawfully paid out.

SEC. 866. Every warrant shall state upon its face to whom, the amount, and the purpose for which it is issued. All warrants shall be dated and shall be numbered consecutively in a record to be kept by the board of the number and amount of each; and no warrant shall be paid unless there is in the treasury funds enough to pay all outstanding warrants bearing a lower number. No warrant shall be increased by reason of any depreciation in the market value thereof, nor shall any contract or warrant be made payable or paid in anything but currency.

SEC. 867. Suit may be brought by and in the name of the board, upon any bond given to the board, but the sum recovered shall be for the use of the fund of the district for which such bond was given.

SEC. 868. If the assessment first levied shall prove insufficient to complete the improvement, the board shall report the amount of the deficiency to the council, and the council shall thereupon make another assessment on the property previously assessed, for a sum sufficient to complete the improvement, which shall be collected in the same manner as the first assessment. *Provided*, that when any work has been begun, under the provisions of this act, which shall not be completed and paid for out of the first or other assessment, it shall be the duty of the said council to make such assessment for its completion, from year to year, until twenty per centum on the value of the real property of such district shall be collected and consumed in such improvement, unless it be sooner completed; and the performance of such duty may be enforced by mandamus, at the instance of any person or board interested (*).

SEC. 869. In ascertaining whether the petition for improvement of any kind is signed by a majority of the owners in value of the real property in the district adjoining the property to be affected, the council shall take and be governed by the valuation placed upon the property as shown by the last county assessment on file in the county clerk's office. Women, married or single, may sign the petition; guardians may sign for their wards, and executors or administrators may sign for the estates represented by them.

SEC. 870. The boards of improvement herein mentioned shall have control of the construction of the improvements in their districts. They may advertise for proposals for doing any work by contract; and may accept or reject any proposals.

(*) See *City of Little Rock v. Board of Improvements, etc.*, 42—152.

SEC. 871. All contractors shall be required to give bond for the faithful performance of such contracts as may be awarded them, with good and sufficient securities, in double the amount of the contract work, and the board shall not remit or excuse the penalty or forfeiture of said bond or the breaches thereof. They may appoint all necessary agents for carrying on the work, and may fix their pay. They may buy all necessary material and implements, and may sell any such materials or implements as may be on hand and which may not be necessary for the completion of the improvement under way, or which may have been completed; and may, in general, make all contracts in the prosecution of the work as may best subserve the public interest.

SEC. 872. In order to hasten the work the board may borrow money, not exceeding ninety per centum of the estimated cost of the work, at a rate of interest not exceeding ten per centum per annum, and may pledge all uncollected assessments for the repayment thereof.

SEC. 873. After the completion of any sewer, or branch sewer, authorized to be built under the provisions of this act, it shall and may be lawful for the board of health of any city to which this act is applicable, whenever, in their opinion, the public health will be promoted thereby, to order any one or more property owners near or adjacent to any sewer to construct upon their property sewers leading from some point or place on their premises to the sewer of the city, for the purpose of draining off surface or other water, and for the purpose of conducting any excrement that may be at or about such premises and filth of every nature, character and description into the sewers belonging to the city. In the order so issued to construct the sewers aforesaid, for the purpose aforesaid, the time within which the same is to be completed, the nature and character of the material to be used in the construction thereof and the place of tapping the sewers of the city shall be designated, as well as the manner of doing the same.

SEC. 874. If the owner of said property shall fail, neglect or refuse to make the sewer so ordered within the time in said order prescribed, unless further time be granted for the completion of the same, it shall be the duty of the board of health to cause such sewer to be constructed, by contract or otherwise, in as economic and substantial a manner as may be practicable; and for that purpose the board of health is hereby authorized to enter upon, by its agents, contractors and employes, any property on which they may order a sewer to be constructed, doing as little damage as possible; and when the same shall have been completed and the cost ascertained, the same shall become a charge and lien upon said property; and said board are hereby authorized and empowered to institute suit in any court having jurisdiction to enforce liens against real property in the manner hereinbefore designated for the commencement of suits by the board of improvement, for the purpose of making said property chargeable for the lien herein provided and the amount of the construction of said sewer, together with twenty per centum penalty for non-compliance with the order of said board; and when decree shall have been obtained, the property shall be ordered sold in the manner in this act heretofore provided for the sale of property.

SEC. 875. All appeals to the supreme court from decrees, rendered against property as aforesaid, shall be prosecuted within the time and under the restrictions and limitations in this act set forth, and no injunction shall

be issued by any court restraining the building of any sewer ordered by the board of health. All notices and summons required by section 874 shall be served in the manner pointed out by this act, as well against resident as non-resident owners of property; and the court shall be open, as hereinbefore provided, and the same preference shall be given to suits commenced under said section, and the same summary mode of proceeding shall be adopted in pleading and in all matters relating to the enforcement of said lien as is provided for in suits brought under section 843.

SEC. 876. Nothing in this act shall be so construed as to authorize the board of health to order or compel the building of a sewer by one property owner over the property of another, or for a greater distance from his property through or into any street or alley than three hundred feet, to a place where a connection can be made with a sewer.

SEC. 877. The city council shall regulate, by ordinance, the terms, time and manner, and the compensation which shall be paid by private parties not building sewers under the orders of the board of health, upon compliance with which said parties may tap the sewers of said city.

SEC. 878. The city council shall have power, by ordinance, to compel all sewers built by private parties or under the direction of the board of health to be kept clean and in repair, by fine and imprisonment of the party in possession as owner or lessee of the property where such sewer may be situate; but the fine shall not exceed fifty dollars for any one neglect, nor the imprisonment be more than ninety days.

SEC. 879. It is hereby declared a misdemeanor for any person to injure, damage or destroy any sewer, public or private, made under the provisions of this act, and any person so offending, on conviction thereof, shall be punished by fine and imprisonment, or both, at the discretion of the court, in any sum not more than five hundred dollars, and for a period not longer than six months, and shall also be liable for all such damage, which sum shall be found by the jury; and for the sum so found judgment shall be rendered in favor of the city, and execution shall issue thereon as on other judgments at law.

SEC. 880. No member of any board of improvement shall be liable for any damages sustained by any one in the prosecution of the work under his charge, unless it shall be made to appear that he has acted with a corrupt or malicious intent.

SEC. 881. No injunction shall issue to restrain the prosecution of any work contemplated by this act; but any person injured shall seek his relief by proceedings at law, within the time hereinbefore provided, or he shall be deemed to have waived the same, except that an injunction may issue where an illegal assessment shall be sought to be enforced under the color of this act.

SEC. 882. The board of improvement shall have power to enter upon any private property for the construction of any designed improvement, and any damages that may be sustained thereby shall be paid out of the improvement fund.

SEC. 883. If the person damaged and the board of improvement can not agree on the sum to be paid for such damages, the person aggrieved may file his petition in the circuit court of the county, setting forth his grievance, and asking compensation therefor, making the board a party defendant.

SEC. 884. The issues in such suit shall be made up as in other cases at law, and the cause shall be tried by a jury, unless dispensed with by the parties; and the case shall be advanced on the docket so as to have precedence of all other causes.

SEC. 885. The judge of the circuit court may hold a special term at any time for the trial of any such cause, giving ten days' notice to the parties of the time of holding such special term, which notice may be in writing, and shall be served on the parties as a writ of summons is directed to be served, unless such notice be waived by the parties, or one of them.

SEC. 886. The judge of said court may, in vacation, in case an agreement can not be arrived at between the board of improvement and the owner of such property in relation to the damages claimed, fix an amount to be deposited with some person to be designated by the court, before the entering upon and taking possession of the property to be used and taken as aforesaid; and upon the amount required being deposited and certificate thereof filed in said cause, the work may proceed.

SEC. 887. If any lands sold under this act shall not be redeemed within the time allowed herein, the court in which the suit is brought for the condemnation thereof shall direct a commissioner to execute to the purchaser or his assignee a deed, which may be in the following words:

"Know all men by these presents, That whereas, a decree was rendered in the ——— court, of ——— county, on the ——— day of ———, 18—, condemning to be sold for the non-payment of assessment for local improvement certain lots (or blocks, as the case may be), which are described as follows: ———, lying in the city of ———; and whereas, they were duly sold by a commissioner appointed by said court for that purpose in said cause, in which the board of improvement No. ———, for the purpose of ———, was plaintiff, and ——— was defendant, and were bought by ——— for the following sums respectively, which sums were by him duly paid; and whereas, the time allowed for the redemption of said lands has expired, and I, ———, as commissioner, appointed by said court in said cause, am directed by said court to execute a deed conveying said lands to him; therefore, in consideration of the premises, I, the said ———, do hereby grant and convey unto the said ——— the lands above described. Witness my hand this ——— day of ———, 18—."

Which deed shall be executed by the commissioner in the same manner as other deeds are required to be executed in cases of sale made under decrees of courts of chancery. Said deed shall be *prima facie* evidence that all things were done that were necessary to make good the said sale and conveyance, for the transfer of an estate in fee simple; and no irregularity not going to the true merits of the proceeding to condemn said lands and to sell and transfer them, or which could have been taken advantage of on appeal, shall suffice to impair the validity of any such deed.

SEC. 888. The deed mentioned in the foregoing section shall only be made on the filing of the certificate of purchase in the court, unless proof of the loss thereof shall be made to the satisfaction of the court.

SEC. 889. An amount bid at the sale of such lands equal to the assessment, penalty and costs shall be paid at the time of such sale, and the residue of the purchase money shall be paid into court, and within twenty days after

the period of redemption shall have expired the court shall cause the assessment and penalty to be paid over to the board of improvement.

SEC. 890. If the owner of the property sold shall come into court at any time within the period allowed for redemption, and shall waive his right of redemption, the court shall order the purchaser to pay the amount that may be going to him within twenty days after service of a copy of the order made on him to that effect, and such payment shall be made into court for the benefit of such owner, and on failure of the purchaser to make such payment, the court shall make an order setting aside the sale and restoring the property to the owner free from all claims of the purchaser, upon payment into court for his use of the amount of the assessment, penalty and costs, and twenty per centum thereon, which money shall be paid over to said purchaser on his application.

SEC. 891. In case the certificate of purchase shall have been assigned, the notice provided for in the preceding section may be served on the assignee holding the same; and in case the owner of the certificate of purchase shall not be known, and that fact shall be made apparent to the court, the court shall cause publication to be made of a copy of said order in some newspaper published in the city for two insertions, the last insertion to be at least two weeks before the making of the order herein contemplated.

SEC. 892. In making such sales, if any bidder to whom any parcel of land shall be knocked off shall fail to pay his bid, as herein provided, the commissioner shall at once offer the same again, and the bid of such delinquent bidder shall not be cried again at such sale.

SEC. 893. All sales shall be for cash, and to the highest legal bidder. If the sales are not completed on the first day, the commissioner shall continue the same from day to day until completed. In other respects such sales shall be governed by the rules and laws regulating other sales of land made under decrees in chancery, and with like notice.

SEC. 894. Should any of the lands fail to be sold for any reason, the court may from time to time order the same to be offered again for sale.

SEC. 895. Any duty required to be performed by this act may at any time be enforced by mandamus at the suit of any person or board interested therein. *Act March 22, 1881.*

REVENUE AND DEBTS OF MUNICIPAL CORPORATIONS (s).

SEC. 896. The council of any municipal corporation may, on or before the time fixed by law for levying county taxes, make out and certify to the county clerk the rate of taxation levied by said municipal corporation on the real and personal property within such city or town. The amount so certified shall be placed upon the tax book by the county clerk of the county and collected in the same manner that state and county taxes are collected. *Act March 9, 1875, sec. 64, as amended by act March 26, 1883, sec. 1.*

SEC. 897. The city or town council of any city or town, for the purpose of extending the time of payment of any indebtedness heretofore incurred, and which, from the limit of taxation, such city or town is unable to pay at its maturity, shall have power to issue the bonds of such city or town, funding

(s) See art. XII, sec. 4, Const., and note thereto. *Brodie v. McCabe*, 83—690.

said debt existing when the present constitution was adopted, or borrow money so as to change but not increase the indebtedness, in such amounts, not less than fifty dollars, and for such length of time, not less than ten nor more than twenty years, and at such rate of interest, not more than ten per cent. per annum, as such city or town council may deem proper; and when such bonds shall have been issued a tax shall be assessed and collected sufficient in amount to provide a sinking fund for their redemption, as provided in the next section, and to pay the interest on said bonds as it shall become due. *Provided*, that no bonds shall be issued under this section until after the first election provided for in section 803, but such funding, and the terms thereof, shall be in the discretion of the council.

SEC. 898. For the purpose of creating a sinking fund, for the gradual extinguishment of the bonds and funded debt of any municipal corporation, the council thereof shall annually levy and collect, in addition to the other taxes of said corporation, a tax upon said property returned and appraised as aforesaid, which shall be paid into said treasury, and be applied to the extinguishment of the bonds or funded debt, and to no other purpose whatever. When there shall have accumulated in said treasury a sufficient amount to redeem any one of the outstanding bonds for which said sinking fund was created, it shall be the duty of the council to apply the same to the purchase of any outstanding bonds at the lowest market price thereof.

SEC. 899. It shall be the duty of the county collector to pay over to the city treasurer of any municipal corporation all moneys received by him arising from taxes belonging to such municipal corporation, within five days after said collector shall have settled with the county clerk; and for delinquent taxes that such county collector may have received belonging to said corporation, he shall pay the same over within five days after he shall have received the same.

SEC. 900. All money heretofore collected by the county collector belonging to any municipal corporation, and now held by him, shall be by him paid into the city treasury within thirty days from and after the passage of this act.

SEC. 901. In any municipal corporation where the power exists to impose taxes on lots, when platted and recorded, the corporation shall also have power to impose taxes upon parcels of lands laid off into lots and sold and leased by metes and bounds, though the same shall not have been platted or recorded.

SEC. 902. The council of any municipal corporation shall have power whenever, in their opinion, the interests of the corporation require it, to levy and collect a tax on dogs and other domestic animals not included in the list of taxable property for state and county purposes.

SEC. 903. The council of any incorporated city or town may order the clerk, or other proper officer of the council, to certify, under his official seal, any delinquent tax which heretofore or which may hereafter be assessed by said city or town, for opening or grading, or otherwise improving any street or alley in said city or town, to the clerk of the proper county; which tax, so certified, said clerk is hereby required to place on the tax book of his county, in a separate column, and the same shall be collected in a like manner as state and county taxes. *Ib.*, sec. 65-70.

ELECTION, APPOINTMENT AND QUALIFICATION OF OFFICERS.

SEC. 904. The annual election of cities of the first and second class and incorporated towns shall be held on the first Tuesday in April of each year; and all officers whose election is provided for by this act, or any ordinance, shall be elected on that day. Special elections of the members of the city council of all cities and incorporated towns shall be held at such time and place as the mayor by proclamation shall direct, so that at least ten days' notice thereof shall be given. Special elections herein authorized to be held shall be held at such time and place as the city council may direct. In all cities there shall be a place appointed in each ward for holding elections. Any person who, at the time of the election of municipal officers, is a qualified voter under the laws of the state for state or county officers, and has resided within the corporation for six months next preceding the election and thirty days in the ward where he offers to vote, shall be deemed a qualified elector. All elections shall be held and conducted in the manner prescribed by law for holding state and county elections, so far as the same may be applicable.

SEC. 905. The returns of all municipal corporations shall be made to the clerk of the county in which the corporation is situated, and shall be by him opened within three days after receiving the same, who shall count the vote as the same appears from the poll-books, make an abstract thereof, and forward the same to the mayor; he shall, in like manner and without delay, furnish to each candidate elected a certificate of election, or leave the same at his usual place of abode.

SEC. 906. All officers elected or appointed in any municipal corporation shall take the oath or affirmation prescribed by the constitution of this state for officers. The aldermen or council may require from such officers as they think proper a bond with good and sufficient security, with proper penalty, for the faithful discharge of their offices and duties; and shall have power to declare the office of any person elected vacant who shall fail to take the oath of office or give the bond herein required within ten days after he shall have been notified of his election or appointment, and proceed to appoint as in other cases of vacancy.

APPROPRIATION OF PRIVATE PROPERTY TO THE USE OF MUNICIPAL CORPORATIONS.

SEC. 907. When it shall be deemed necessary by any municipal corporation to enter upon or take private property for the construction of wharves, levees, parks, squares, market places or other lawful purpose, an application in writing shall be made to the circuit court of the proper county or to the judge thereof in vacation, describing as correctly as may be the property to be taken, the object proposed, and the name or names of the owner or owners, and of each lot or parcels thereof known; notice of the time and place of such application shall be given, either personally in the ordinary manner of serving process or by publishing a copy of the application, with a statement of the time and place at which it is to be made, for three weeks next preceding the time of application, in some newspaper of general circulation in the county. If it shall appear to the court or judge that such notice has been served ten days

before the time of application, or has been published as provided, and that such notice is reasonably specific and certain, then the court or judge may set a time for the inquiry into and assessment of compensation by a jury before said court or judge.

SEC. 908. A jury shall be summoned for the purpose of making such inquiry in the same manner that petit jurors are summoned in the circuit court for other purposes, which inquiry and assessment shall be made at the time appointed, unless for good cause continued to another day to be specified. If, at the time of such application, it appears that any of the owners of property sought to be condemned are infants or of unsound mind, a guardian *ad litem* shall be appointed. The municipal corporation may be required to file a more full and accurate description of the property to be taken and the object proposed, and maps, plats and surveys, if the court or judge deem the same necessary or proper. The assessment shall be made on each lot or parcel of land separately and distributed to the owner or owners of each tract according to their true interest and ownership, on the order of the court.

SEC. 909. In case of dispute as to interest, title or ownership, the money allowed therefor shall be held subject to the order of the court until the same is amicably settled between the disputants or determined by due course of law; the inquiry and assessment, in all other respects, shall be made by the jury under such rules and restrictions as shall be given by the court. The jury shall be sworn to make the whole inquiry and assessment, but may be allowed to return a verdict as to part and be discharged as to the rest, at the discretion of the court. In case the jury shall be discharged from rendering a judgment in whole or in part, another shall be impaneled at the earliest convenient time, who shall take the whole inquiry and assessment, or the part not made, as the case may be.

SEC. 910. So soon as the amount of compensation that may be due to the owners of the property taken, or to any of them, shall have been ascertained by the jury, the court shall make such order as to its payment or deposit as shall be deemed right and proper in respect to the time and place of payment and the proportion to which each owner is entitled, and may require adverse claimants of any part of the money or property to interplead, so as to fully settle and determine their rights and interests according to equity and justice. The court may direct the time and manner in which possession of the property condemned shall be taken or delivered, and may, if necessary, enforce any order giving possession. The costs occasioned by the assessment shall be paid by the corporation, and, as to the other costs which may arise, they shall be charged or taxed as the court may direct. No delay in making an assessment of compensation or in taking possession shall be occasioned by any doubt which may arise as to ownership of the property, or any part thereof, or as to the interests of the respective owners; but in such cases the court shall require a deposit of the money allowed as compensation for the whole property in dispute; and, in all cases, as soon as the corporation shall have paid the compensation assessed, or secured the payment by a deposit of money under the order of the court, possession of the property may be taken and the public work or improvement progress.

SEC. 911. Any party interested in such inquiry, who shall feel himself aggrieved by the finding of the jury or the order of the court, may have the

part thereof whereof he complains reviewed, by filing a petition for that purpose in the circuit court, or with the judge thereof, in the proper county, during the term at which, or within three days from, the finding or decision complained of shall have been made. Upon the party complaining entering into bond for costs of suit, a review shall be granted; and the court may suspend the execution of any order that may have been made therein.

SEC. 912. In all cases where the municipal corporation shall pay or secure by a deposit of money the compensation assessed by the jury, and give such security as may be deemed adequate to pay any further compensation which may be adjudged on the review, the right to take and hold the property condemned shall not be affected by any such review. If, on the review, the complainant shall not be allowed a greater amount than first assessed, he shall pay all costs of such review. *Ib.*, *secs.* 71-76.

DAMAGES AGAINST CITIES AND TOWNS BY REASON OF GRADING.

SEC. 913. In all cases where any municipal corporation shall be liable for the payment of damages to the owner or occupant of any lots or grounds, by reason of the grading of any streets or alleys, or public grounds, or part thereof, the said damages shall be ascertained and assessed by three disinterested reputable freeholders of said city, appointed, one by the city or town council, one by the owner of the property injured, and the persons thus appointed shall choose the third person.

SEC. 914. The assessors thus appointed, before entering on their duties, shall take an oath or affirmation, before some officer authorized to administer oaths, that they will well and truly, to the best of their knowledge and ability, appraise the damages which the claimant or claimants may or shall have suffered by reason of such grading, and for which the said city is liable, which oath shall be filed in the office of the city clerk, and said assessors shall, within thirty days after their appointment, make said assessment, and file the same in the city clerk's office, where it shall be subject to the inspection of all claimants for damages; and the damages by them assessed shall be by them paid out of the city treasury or tendered to the party in whose favor the said damages were assessed. If the claimant refuse to appoint, the council shall appoint all three of the assessors.

SEC. 915. If any person shall neglect or refuse to accept the amount so assessed, as herein provided, and shall prosecute the city, and if by suit for damages he or they shall not recover more than the amount allowed by the assessors, such party so prosecuting shall pay all costs of suit. No claimant for damages shall commence any suit for damages on account of such grading or improvement until he shall have filed a claim for greater damages with the city clerk at least thirty days before the commencement of the suit. Nor shall any suit be commenced until after the assessors shall have been appointed and made return of their assessment as herein provided, nor for thirty days thereafter. The city or town council shall, within three days after the claimant shall have notified them in writing that he has appointed his assessor, appoint one assessor on the part of the city, and they shall, within five days thereafter, select the third assessor, and qualify as hereinbefore provided.

ANNEXATION OF TERRITORY TO TOWNS AND CITIES.

SEC. 916. Whenever a majority of the real estate owners of any part of a county, contiguous and adjoining any city or incorporated town, shall desire to be annexed to such city or town, they may apply by petition in writing to the county court of the county in which said city or town is situated and they reside, and shall name the person or persons authorized to act on behalf of the petitioners.

SEC. 917. When such petition shall be presented to said court, they shall cause the same to be filed, and like proceedings shall be had for the hearing thereof as is prescribed in sections 786 and 787. After such hearing, if the court shall be satisfied that at least six qualified voters having a freehold interest in the territory proposed to be annexed actually reside within the limits prescribed in the petition, and that said petition has been signed by a majority of them; that the said limits have been accurately described, and an accurate map thereof made and filed, and that the prayer of the petition is right and proper, and that said petition should be granted, then it shall make and indorse on said petition an order to the effect that the territory described may be annexed to and become a part of the city or town named in said petition, which said order shall be recorded by the clerk of the county.

SEC. 918. No further action shall be taken for the space of thirty days, and within that time any person interested may institute a proceeding to have the annexation prevented in the circuit court; and if the court or judge hearing such proceeding shall be satisfied that a majority of the qualified voters, freeholders as aforesaid, have not signed the same, or that the territory proposed to be annexed is unreasonably large, or that said territory is not properly described, they shall make an order restraining any further action under the order of the county court and annulling the same, but such proceeding shall not bar any subsequent petition.

SEC. 919. When any complaint shall be made in accordance with the preceding section to prevent an annexation of territory, notice thereof shall be given to the city or town authorities and the agent or agents of the petitioners.

SEC. 920. If no such notice shall be given within thirty days from the making of the order of annexation by the county court, the proceeding before said court shall in all things be confirmed. *Provided*, the city or town council shall, by ordinance or resolution, accept said territory. If the council accept the same, two copies of the entire proceedings and plats shall be made out by the county clerk, and, by him duly certified, shall forward one to the city or town council, and the other to the secretary of state, who shall file and preserve the same.

SEC. 921. So soon as said resolution or ordinance declaring such annexation has been adopted or passed, the said territory shall be deemed and taken to be a part and parcel of the limits of such city or town, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of such city or town.

SEC. 922. When any municipal corporation shall desire to annex any contiguous territory thereto, lying in the same county, it shall be lawful for the council to submit the question to the qualified electors at least one month

before the annual election. If a majority of the votes cast on that question shall be in favor of annexation, the said corporation shall present to the county court a petition praying for such annexation. The like proceeding shall be had on said petition as is prescribed in sections 785, 786 and 787, so far as the same may be applicable, and if, within thirty days after a transcript shall be delivered as provided, no notice of a complaint against such annexation shall be given at the end of said thirty days (and in case of any such complaint, then after the end of thirty days after the dismissal of said complaint), the territory shall, in law, be deemed and be taken to be included in and shall be a part of said corporation, and the inhabitants thereof shall in all respects be citizens thereafter of said municipal corporation (t), and the county clerk shall make out and certify to the city or town council and the secretary of state the transcripts provided for in the preceding section.

SEC. 923. The secretary of state shall receive and preserve in his office all papers transmitted to him in relation to the organization, incorporation or annexation of territory to cities and towns.

FURTHER GENERAL PROVISIONS.

SEC. 924. All by-laws, ordinances, resolutions or orders for the appropriation of money shall require for their passage or adoption the concurrence of a majority of the aldermen of any municipal corporation. All by-laws and ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless two-thirds of the members composing the council shall dispense with the rule. No by-law or ordinance shall contain more than one subject, which shall be clearly expressed in its title.

SEC. 925. No alderman or member of any council shall, during the term for which he shall have been elected, or one year thereafter, be appointed to any municipal office which was created, or the emoluments of which shall have been increased, during the time for which he shall have been elected. No such alderman or member shall be appointed to any municipal office, except in cases provided for in this act, during the time for which he may have been elected; nor shall any alderman or member be interested, directly or indirectly, in the profits of any contract or job, for work or services to be performed for the corporation.

SEC. 926. The emoluments of no officer whose election or appointment is required in this act shall be increased or diminished during the term for which he shall have been elected or appointed (u). Nor shall any change of compensation affect any officer whose office shall be created by authority of this act, during his existing term, unless the office be abolished. No person who shall have resigned or vacated any office shall be eligible to the same during the period of time for which he was elected or appointed to serve, where, during the same time, the emoluments have been increased.

SEC. 927. Prisoners confined in the county jail or city prison, by sentence of the mayor or police court, for a violation of a city or town by-law, or ordi-

(t) By force of this statute the annexation for which it provides follows the vote of the town and the proper formal steps to be taken in the county court, unless there be a remonstrance filed and sustained. *Dodson v. Mayor, Fort Smith*, 33—508.

The vote of the town makes a *prima facie* case for annexation: the onus of showing sufficient cause against it is upon the remonstrants. *Ib.*

(u) See *Rou v. City of Little Rock*, 34—303.

nance, or regulation, may, by ordinance, be required to work out the amount of all fines, penalties, forfeitures and costs, at the rate of one dollar per day, on the streets or other improvement under the control of the city council.

SEC. 928. For the purpose of holding the election provided for on the first Tuesday in April, 1875, it shall be, and it is hereby made, the duty of the governor of this state, upon the application in writing of fifty or more qualified electors of any city of the first class asking for the same, to appoint three resident citizens and tax-payers of such city as commissioners to lay off and divide such city into convenient wards, not exceeding eight, and providing suitable precincts for voting in such ward, which shall be done and notice thereof published by such commissioners in some newspaper published in said city at least ten days before such election. In all cities where such application is not made and commissioners appointed as aforesaid, the wards thereof shall, for the purpose of the election aforesaid, remain as now constituted. *Provided*, that after said election, such cities shall regulate the wards thereof as the council may direct; but no change shall be made in the boundaries of any ward within thirty days previous to any city election.

SEC. 929. Any person owning property and having taxes to pay in any city or town may, upon application to any judge or court having authority to grant injunctions, enjoin the collection of any tax levied in such city or town, without authority of law, and may also enjoin the issue or the payment by such city or town of any warrants, certificates or other form or evidence of indebtedness against such city or town issued or contracted without authority of law.

SEC. 930. Whenever any corporation shall desire to throw any portion of the territory lying within its corporate limits outside of such limits and remit it back to the county in which such corporation is situated, it shall be lawful for the council of such corporation to submit the question to the qualified electors of such corporation, at an election to be held for that purpose, after having given notice of such election four weeks by advertisement in one of the papers published in such corporation, or if there be no paper published in such corporation, by advertisement posted in two of the most public places in such corporation. If a majority of the votes cast on that question shall be in favor of throwing such territory outside of its corporate limits, the said corporation shall present to the county court a petition praying for such change in its territorial limits, and the like hearing shall be had on such petition as is prescribed in section 786.

SEC. 931. If the county court shall be satisfied, after hearing such petition, that a majority of the qualified electors of such corporation are in favor of the exclusion of said territory mentioned in said petition from within its limits, and that said territory to be excluded has been accurately described, and that it would be proper and right to grant such petition, it shall make an order excluding the territory in said petition mentioned from the limits of such corporation and remitting it back to the county; and it shall be the duty of the clerk of the county court to make out a certified copy of such order and to deliver it to the recorder of his county, whose duty it shall be to record such order in the proper book of records in his office, and it shall also be the duty of such recorder to make out and forward to the secretary of state a certified copy of said record.

SEC. 932. After said record shall have been filed and a copy thereof forwarded to the secretary of state, said territory shall cease to be a part of said corporation. *Provided*, that the limits of cities of the first and second class shall not be reduced to a less area than they were on the first day of January, A. D. 1872.

SEC. 933. At the July term of the county court, and during said term, any person who may think himself aggrieved by the assessment of his property may appeal to the same court and have the assessment corrected.

SEC. 934. Every appeal shall be in writing, and shall state specifically the ground of the appeal and the matter or thing complained of, and no other matter shall be considered by the court than that set forth in the written appeal.

SEC. 935. The county court shall hear and determine all appeals in a summary way upon evidence, and shall correct and adjust the assessment lists accordingly. *Ib.*, *secs.* 77-93.

SURRENDER AND REPEAL OF CHARTERS.

SEC. 936. The charters and all the amendments thereto of all municipal corporations within this state designated as cities of the second class and incorporated towns may be surrendered, all offices held thereunto abolished and the territory and inhabitants thereof remanded to the government of this state in the manner hereinafter provided.

SEC. 937. Whenever one hundred qualified electors of any city of the second class, or twenty-five qualified electors of any incorporated town shall petition the city or town council thereof asking the surrender of the charter of said municipal corporation, it shall be the duty of said city or town council immediately to submit the question whether such surrender shall be made to the qualified electors of said municipal corporation at an election to be held for that purpose, after having given notice of such election four weeks by advertisement in one of the newspapers published in said corporation, or if there be no newspaper published therein, by advertisement posted in two or more public places in said corporation.

SEC. 938. Said election shall be held and conducted by, and the returns thereof shall be made to, said city or town council in such manner as by said city or town council may be directed.

SEC. 939. When said returns shall have been made as aforesaid, it shall be the duty of said city or town council to count the votes cast at said election, and if a majority of the votes so cast shall be in favor of the surrender of the charter of such municipal corporation, the said city or town council shall present to the county court of the county in which said corporation is situated a petition showing that an election has been held as aforesaid and the result thereof, and praying that the charter of said municipal corporation may be surrendered.

SEC. 940. If it shall appear to the satisfaction of said court that said election has been held as aforesaid, and that a majority of the votes cast at said election was in favor of the surrender of the charter of such municipal corporation, it shall be the duty of said county court to make and enter upon its record an order declaring the charter and all the amendments thereto of said municipal corporation to be surrendered under the provisions of this act, and

shall order the clerk of said court to make out and certify under his official seal two transcripts of said order, one of which said clerk shall forward to the secretary of state, to be kept on file in his office, and the other he shall deliver to the recorder of said county, whose duty it shall be to record the same in his office.

SEC. 941. When the county court shall have made the order mentioned in the preceding section of this act, the charter and all amendments thereto of any such municipal corporation shall be deemed to be surrendered and repealed, and shall then cease to exist; and the population and territory thereof, theretofore governed under and by virtue of said charter and the amendments thereto, shall then be resolved back into the body of the state, and all offices theretofore held under, and by force of, said charter and the amendments thereof shall be hereby abolished, and all power of taxation, in any form whatever, theretofore vested in, or exercised by, the authorities of such municipal corporation, by virtue of its said charter and the amendments thereto, shall then be forever withdrawn and reserved to the legislature, and the public buildings, squares, promenades, wharves, streets, alleys, parks, fire engines, hose and carriages, horses and wagons, engine houses, engineer instruments and all other property, both real, personal or mixed, theretofore used or held by such municipal corporation, for municipal purposes, shall be hereby transferred to the custody and control of the state, to remain public property, as it has always been, for the uses to which said property has been applied, and the county court of the counties in which said extinct municipal corporations, respectively, were situated shall take immediate possession of and control the same until otherwise provided by law.

SEC. 942. No person holding office under and by virtue of the charter of such municipal corporation shall, from and after the surrender and repeal of said charter as herein provided, exercise, or attempt to exercise, any of the powers or functions of said office.

SEC. 943. As to all municipal corporations in this state whose charters may be surrendered and repealed under the provisions of this act, the governor of the state shall appoint an officer for such extinct corporations, respectively, to be known as a receiver and back-tax collector, who shall take the oath required of other collectors of the public revenue, and shall give bond, with good sureties, to be approved by the county court of the county in which the extinct corporation was situated, in such sum as the county court may prescribe.

SEC. 944. The receiver and back-tax collector shall, as soon as appointed and qualified, enter upon the duties of his office. It shall be his duty, and he is hereby empowered, to take possession of all books, papers and documents pertaining to the assessment and collection of taxes embraced by this act, and also possession of all the private property, if any, belonging to said extinct corporations, respectively.

SEC. 945. Such receiver and back-tax collector shall make to the circuit court in chancery, in the county in which the extinct corporation was situated, every six months, a full, clear and complete statement, showing all taxes collected and settled, and all in his hands that remain to be collected and settled.

SEC. 946. He shall at the end of each month pay into the treasury of the state the whole sum by him collected or received, less his compensation. He

shall distinguish in making such payments the respective sources from which the moneys paid in are derived, showing what is collected from taxes for general purposes and what for special purposes, designating the particular or special purpose, so that the same may be kept separate in the state treasury, in order that the treasurer may pay the same according to the lien, priority or equity, if any which may be declared by any court touching any of said funds in favor of any creditor or class of creditors.

SEC. 947. For the purpose of collecting the revenue embraced in the provisions of this act the receiver and back-tax collector is empowered and authorized to file a general creditors' bill in the name of the state, in behalf of all creditors, against all the delinquent tax-payers who owed taxes to the extinct corporation at the time of the surrender or repeal of its charter, which bill shall be filed in the circuit court in chancery held in and for the county in which said extinct corporation was situated.

SEC. 948. All the said delinquents in any one county shall be embraced in one summons to answer, and for the issuance of the same the clerk shall receive a fee of five cents for each defendant named in the summons, except for the first, and for that the fee allowed by law in other cases. *Provided*, he shall not receive exceeding twenty dollars for such summons; and the sheriff, for serving the same, shall receive for each defendant ten cents, except the first, and for that the fee allowed for like services in other cases.

SEC. 949. Publication for non-residents shall embrace in the same publication, if practicable, all non-resident defendants, the object being to make one proceeding embrace the whole taxes of any one of such extinct corporations.

SEC. 950. All pending suits in favor of any of said extinct corporations are to be revived in the name of the state and consolidated with the general proceedings herein provided for, and when so consolidated to form part of said general proceeding.

SEC. 951. The court in which said proceeding may be instituted shall have power to settle and adjust all equities, priorities and liens, and to give all relief, both to the defendants and creditors, that might be given if there were as many separate suits as there are creditors and delinquent tax-payers.

SEC. 952. Such court shall have power to enforce all liens upon property for the payment of such taxes, and to order and make all sales of property necessary to the collection of such taxes. The taxes embraced by this act, and which it provides for, are all taxes imposed by said extinct municipal corporations up to the time of the surrender or repeal of their respective charters, and none other.

SEC. 953. Publication shall make all creditors parties, with the right to relief as fully as if specially named, and they may at any time file with the clerk of the court their claims, or attested copies, retaining the original, if they desire, subject to be produced, however, as the court may order, and placed in the custody of the clerk.

SEC. 954. The simple filing of said claims, respectively, attested by the affidavit of the owner, or his agent or attorney, shall be proof of such claim in common form, and, if not contested, entitles the same to payment pro rata; and for administering the oath in proving such claims, in common form, and filing the same, the clerk shall receive the sum of ten cents, to be paid at the

time of making the oath and filing the claim. If any creditor or receiver, or back-tax collector, shall desire to contest the validity, in whole or in part, of any claim filed in common form, he may do so in a summary way in the progress of the cause.

SEC. 955. The opposing parties in such contests shall reduce the facts to writing that are necessary to its determination, and file the same, and, when filed, they shall become part of the record, and the court shall have power, upon motion, and in a summary way, to hear and determine all questions of priority of payment in the progress of the cause.

SEC. 956. When any party is dissatisfied with the decision of any litigated question, he may have such question reheard, upon appeal or writ of error in the supreme court, but so much of the record only as pertains to that particular litigation shall form the transcript and record for the appellate court, and the costs shall be paid by the parties to such appeal, as the appellate court may direct, unless the receiver and back-tax collector is a party to the litigation on behalf of creditors generally, and in that case the costs may, if the appellate court think proper, be charged to the whole, or some particular fund, as right and justice may require.

SEC. 957. Said receiver and back-tax collector shall make to said circuit court in chancery a full and complete statement of all the private property, if any, belonging to such extinct corporations, respectively, and all such property shall be considered by said court as a part of the subject matter of said creditor's bill, and said court shall make all such orders and decrees as may be deemed necessary and proper for the sale thereof, and shall decree the application of the proceeds of such sale to the payment of the debts of said extinct corporations, respectively.

SEC. 958. Funds collected under this act shall be paid out by the treasurer of the state, from time to time, to those entitled thereto, in such manner as said circuit court in chancery may adjudge and decree, on the warrant of said receiver and back-tax collector, countersigned by the judge of said court.

SEC. 959. The receiver and back-tax collector shall receive such compensation for his services as shall be fixed by the county court of the county in which the extinct corporation was situated. *Act Feb. 19, 1883.*

II.—CORPORATIONS FOR MANUFACTURING AND OTHER LAWFUL BUSINESS.

SECTION

- 960. Corporation to carry on any lawful business, who may form.
- 961. Capital stock, amount of shares.
- 962. Purposes of corporation to be stated.
- 963. First meeting of stockholders.
- 964. Board of directors, when elected; term.
- 965. Failure to elect not to dissolve corporation.
- 966. Officers, how elected; to reside and keep offices, where.
- 967. Vacancy, how filled.
- 968. To file copy of articles of association, where; what to state; copy evidence, when.
- 969. Quorum, what.
- 970. Calls on stock, by whom made; how collected.
- 971. Annual report, what to contain; where filed.
- 972, 973. General corporate powers.

SECTION

- 974. Books open to inspection, where kept.
- 975. Stock, how transferred; lien on.
- 976. Articles of association amended, how.
- 977, 978. To be recorded.
- 979. Certificates required to be under oath.
- 980. President and secretary liable, when and for what.
- 981. Stockholders liable, when.
- 982. Directors liable, when.
- 983. Officers generally liable, when.
- 984, 985. Insolvent; directors liable, when.
- 986, 987, 988. Lien on stock, foreclosed how.
- 989. Other liens not to be affected by.
- 990. May remove place of business, how.
- 991. Power of legislature over.

SECTION 960. Any number of persons, not less than three, who, by articles of agreement in writing, have associated, or shall associate, according to the provisions of this act, under any name assumed by them, for the purpose of engaging in or carrying on any kind of manufacturing, mechanical, mining or other lawful business, and who shall comply with all the provisions of this act, shall, with their successors and assigns, constitute a body politic and corporate, under the name assumed by them in their articles of association.

SEC. 961. The amount of capital stock in every joint-stock corporation shall be fixed and limited by the stockholders in their articles of association, and shall be divided into shares of twenty-five dollars each; but every such corporation may increase its capital stock, and the number and amount of shares therein, at any meeting of the stockholders specially warned for that purpose.

SEC. 962. The purpose for which every such corporation shall be established shall be distinctly and definitely specified by the stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds for any other purpose.

SEC. 963. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the corporation, at such time and place as they may appoint, by giving notice thereof in any one or more newspapers published in the county in which such corporation is to be established, or in any adjoining county, at least fifteen days before the time appointed for such meeting. But said notice may be waived by a writing, signed by all the subscribers to the capital stock of such company, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of such corporation, which has been held pursuant to such written waiver of notice, shall be valid.

SEC. 964. The stock, property, affairs and business of every such corporation shall be under the care of, and shall be managed by, not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be

stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

SEC. 965. If an election of directors in any such corporation shall not take place at the annual meeting thereof in any year, such corporation shall not thereby be dissolved, but an election may be had at any time within one year, to be fixed upon, and notice thereof to be given by the directors.

SEC. 966. The directors of every such corporation shall choose one of their number to be president, and shall also choose a secretary and treasurer, which two last mentioned officers shall reside and have their place of business and keep the books of said corporation within this state, and shall choose such other officers as the by-laws of the corporation shall prescribe; all of which said officers shall hold their offices until others shall be chosen in their stead.

SEC. 967. The directors of such corporation, for the time being, shall have power to fill any vacancy which may happen in their board by death, resignation or otherwise for the current year.

SEC. 968. Before any corporation, formed and established by virtue of the provisions of this act, shall commence business, the president and directors thereof shall file a true copy of their articles of association, at full length; and also a certificate setting forth the purpose for which such corporation is formed, the amount of its capital stock, the amount actually paid in, and the names of its stockholders, and the number of shares by each respectively owned, with the secretary of state, and a duplicate thereof with the clerk of the county in which such corporation is to transact business (v). Said articles of association and certificate shall be signed by the president and a majority of the directors; and said secretary and county clerk shall respectively record the same in books to be kept by them for that purpose, and, within thirty days after the payment of any installment called for by the directors of such corporation, a certificate thereof shall be made, signed, filed and recorded as aforesaid. A copy of the certificate first specified in this section, certified by the secretary of this state, under the seal thereof, shall be received in all courts as *prima facie* evidence of the due formation, existence and capacity of such corporation in any suit brought by or against the same.

SEC. 969. A majority of the directors of every such corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business, and a majority of the stockholders present at any legal meeting shall be capable of transacting the business of that meeting; and at all meetings of such stockholders each share shall entitle the holder thereof to one vote.

SEC. 970. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving such notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder, in any proper action for that purpose, or may sell said stock at public auction, giving at least thirty days' notice of the time and place of sale by advertising

(v) An association of persons can not do business as a corporation until their articles of association are filed in the office of the secretary of state, as provided in this section. *Garnett v. Richardson*, 35—141. See *Connor v. Abbott, Id.*, 365.

in some newspaper published in the county where the business of such corporation is transacted, or in an adjoining county. And, in case of a sale, the proceeds thereof shall be first applied in payment of the installment called for, and the expenses of the sale and the residue shall be refunded to the owner thereof. In case the proceeds of such sale shall be insufficient to pay said installments, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

SEC. 971. The president and secretary of every corporation organized under the provisions of this act shall annually make a certificate showing the condition of the affairs of such corporation, as nearly as the same can be ascertained, on the first day of January or of July next preceding the time of making such certificate, in the following particulars, viz.: The amount of capital actually paid in; the cash value of its real estate; the cash value of its personal estate; the cash value of its credits; the amount of its debts; the name and number of shares of each stockholder; which certificate shall be deposited on or before the fifteenth day of February or of August with the county clerk of the county in which said corporation transacts its business, who shall record the same at length in a book to be kept by him for that purpose; and whenever any stockholder shall transfer his stock in any such corporation, a certificate of such transfer shall forthwith be deposited with the county clerk as aforesaid, who shall note the time of said deposit and record it at full length in a book to be by him kept for that purpose; and no transfer of stock shall be valid as against any creditor of such stockholder until such certificate shall have been so deposited.

SEC. 972. All corporations organized and established under the provisions of this act shall be capable to sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute to final judgment in any court or elsewhere; to have a common seal and to alter the same at pleasure; to elect, in such manner as they shall determine, all necessary officers; to fix their compensations and define their duties; to ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same; and to employ all such agents, mechanics and other laborers as they shall think proper.

SEC. 973. Every such corporation shall, by its corporate name, have power to acquire and hold such lands, tenements and hereditaments and such property of every kind as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of or as security for debts due to such corporation, and to manage and dispose of the same at pleasure (w).

SEC. 974. The books of every such corporation containing their accounts shall be kept and shall at all reasonable times be open in the county where such corporation is located, or at the office of the treasurer within this state, for the inspection of any of the stockholders of said corporation; and said stockholders shall have access to the books and statements of said corporation; and shall have the right to examine the same in said county or at said office, and, as often as once in each year, a true statement of the accounts of said corporation shall be made and exhibited to the stockholders, by order of the directors.

(w) See *Jones, McDowell & Co. v. Ark. Mec. and Ag'l Co.*, 38—17.

SEC. 975. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock or property of its members invested therein for all debts due from them to such corporation.

SEC. 976. Every such corporation may amend its articles of association by the specification of any other lawful business in which the stockholders may desire to engage; but before it shall commence any business under its amended articles other than such as was distinctly and definitely specified in its original articles, the president and directors shall cause such of the amended articles as specify the purpose for which such corporation is formed, subscribed by all the stockholders, to be published in a newspaper printed in the county in which such corporation is located, or in an adjoining county; and shall also make a certificate of the purpose for which such corporation is formed, as changed by the amended articles, which certificate shall be signed, deposited and recorded in the same manner as the certificate required in section 968.

SEC. 977. When any such corporation shall increase its capital stock, as provided in section 961, the president and directors shall, within thirty days thereafter, make a certificate thereof, which shall be signed, deposited and recorded as provided in section 968.

SEC. 978. The county clerk, after recording the certificates specified in section 971, shall return the same, with his indorsement of record thereon, to said corporation on demand; and for recording the certificates required in this act he shall be entitled to receive at the rate of ten cents for each one hundred words.

SEC. 979. The certificates required by sections 968, 971, 976 and 977, except certificates of transfers of stock, shall be made under oath or affirmation by the person subscribing the same; and if any person shall knowingly swear or affirm falsely as to any material facts, he shall be deemed guilty of perjury, and be punished accordingly.

SEC. 980. If the president or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of section 971, and to perform the duty required of them respectively, the persons so neglecting or refusing shall jointly and severally be liable to an action, founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal.

SEC. 981. If the capital stock of any such corporation shall be withdrawn and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to them respectively, as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right, by bill in equity, to call upon all the stockholders to whom any part of said stock has been refunded to contribute their proportional part of the sum paid by him as aforesaid.

SEC. 982. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or

that such dividend would render it so, the directors assenting thereunto shall be jointly and severally liable, in an action founded on this statute, for all debts due from such corporation at the time of such dividend.

SEC. 983. If the president, directors or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them, respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all the debts of such corporation contracted during the period of any such neglect or refusal.

SEC. 984. If any corporation, organized and established under the authority of this act, shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action founded on this statute, for all debts contracted after such violation as aforesaid.

SEC. 985. Any corporation, organized under this act, which has a lien upon the stock of any stockholder therein, as provided by section 975, may give notice to such stockholder that, unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation; and, upon default of payment, said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe, by its by-laws, the manner of giving the notice required by this section.

SEC. 986. Such corporation may, at any time within six months after it shall have given the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months' notice shall have expired, advertise in one or more newspapers published in the county where such corporation is located, and if there be no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place of sale, and at the time and place shall state the amount due from such stockholder to such corporation; and may then proceed to sell, for cash, at public auction, to the highest bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corporation, together with the necessary cost of sale; and if the sale of the entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose.

SEC. 987. Whenever the purchasers of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchasers, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stockholder, and the new certificates so issued shall entitle the holders thereof to all the privileges, rights and interests of a stockholder in such corporation.

SEC. 988. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock, as security for his indebtedness, to a third party, and afterward shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner

as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding a transfer or assignment of such stock to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock, or any part thereof, and such corporation may sell the same as herein provided.

SEC. 989. Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

SEC. 990. Any joint-stock corporation, organized under the provisions of this act, may remove its place of business from any county in this state where it is or may be located to any other county in this state. But the president and secretary of such corporation shall procure from the county clerk of the county from which it shall remove a certified copy of the records of its articles of association and all other records showing the state of its affairs, to which certified copy shall be attached the certificate of said president and secretary that such corporation has thus removed, which certified copy and certificate attached shall be left for record, immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and shall be recorded by such clerk at full length in a book kept for that purpose. And the president and secretary of such corporation shall, immediately on such removal, cause a like certificate to be deposited with the secretary of state, which shall be recorded by him in a book kept for that purpose; and they shall cause a duplicate copy of such certificate to be published in a newspaper in the county in which such corporation shall be located, or in an adjoining county; and in case of removal from one county to another, said duplicate shall be published in two newspapers, one in the county from which, and the other in the county to which, such corporation shall remove.

SEC. 991. The general assembly may at any time, for just cause, rescind the powers of any joint-stock corporation created pursuant to the provisions of this act, and prescribe such mode as may be necessary or expedient for the settlement (x) of its affairs. *Act April 12, 1869.*

III.—NAVIGATION COMPANIES.

SECTION

992. How organized.

993. Copy of articles of association evidence, when.

994. To have seal; corporate powers.

SECTION

995. To have right of way in certain cases.

996, 997, 998, 999, 1000. Right of way, how obtained.

1001. May purchase right of way.

SECTION 992. Any number of persons, not less than five, being subscribers to the stock of any contemplated navigation company, may be formed into a corporation for the purpose of buying or building and owning one or more steam-

(x) Upon the dissolution of corporations by legislative act, or otherwise, their property and effects vest in the state in trust, etc. Sec. 1035.

boats, barges and flatboats, to be used in transporting freight and passengers on any river, lake, bayou or other navigable stream within the limits of this state, by complying with the following requirements: When stock to the amount of at least one thousand dollars shall be in good faith subscribed, then the said subscribers may select directors for said company; thereupon said subscribers shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the number of years the same is to continue, which shall not exceed ninety-nine years; the amount of capital stock of the company, which shall be estimated by three or more persons upon oath as sufficient to cover the actual cost of all necessary vessels, together with the cost of the right of way and wharfage privileges hereinafter provided for; the number of directors, and their names, to manage the concerns of the company, who shall hold their offices until others are elected, and the names of two or more commissioners to open books of subscription to the stock; each subscriber to such articles of association shall subscribe thereto his name and place of residence and the number of shares of stock taken by him in such company. The said articles of association shall be filed in the office of the secretary of state, and thereupon the persons who have subscribed to said articles of association, and all persons who shall from time to time become stockholders in such company, shall be a body corporate by the name specified in such articles. *Provided*, that said articles of association shall be null and void unless there is filed, within two years from the date of filing said articles, an affidavit of at least two of the directors named in said articles that the amount of stock required has been subscribed, and that five per cent. of the amount so subscribed has actually been paid the directors of the company within the said period of two years.

SEC. 993. A copy of any article of association filed in pursuance of this act, with a copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the secretary of state or his deputy, shall, in all courts and places, be presumptive evidence of the incorporation of such company and of the facts therein stated.

SEC. 994. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate by the name stated in such certificate, and shall be capable of suing and being sued; and may have a common corporate seal, and may make and alter the same at pleasure; and be capable in law of purchasing, holding and conveying any real estate and personal property whatever necessary for operating and carrying on the business of such company successfully, and for the maintenance thereof, and for the erection of all necessary buildings, yards and appurtenances for the use of the same; also to receive, hold, enjoy and convey any lands or other property whatever legally acquired of other companies; and shall have and be entitled to all the benefits, rights, franchises, lands and tenements and property of every description belonging to said company or companies so acquired; and shall be liable to all the pains and penalties imposed by their respective charters.

SEC. 995. Any company formed under the provisions of this act shall have the right of way, not exceeding two hundred feet in width, over any strip of land connecting two navigable streams or lakes or bodies of water. *Provided*, the same is not more than five miles in width, for the purpose of erect-

ing thereon dirt, plank or horse railroads, and such other improvements as may be necessary for the convenience and business of the company, and that no other company shall have right of way within a less distance than three miles of the way claimed by the company first availing themselves of the provisions of this act.

SEC. 996. Any company desiring to avail themselves of the benefits of the right of way in this act provided for shall petition the county court of the county in which any lands are situated, and over which a right of way is desired, to appoint a jury (y) of twelve men, qualified to serve on juries, whose duty it shall be to appraise and ascertain the value of any lands over which a right of way is desired by any company petitioning, as in this section provided for.

SEC. 997. When any company shall petition, according to the requirements of the last preceding section, the county court shall make an order appointing said jury forthwith; and in said order said jury shall be directed to ascertain and report to said court, within thirty days from the date of their appointment, the value of any lands which, under the provisions of this act, they may be directed to ascertain. Said jury, before entering upon the discharge of their duties, shall take an oath that they will, as nearly as may be, ascertain the number of acres of land by them to be appraised, and report the same to said court, together with the average value per acre of such land in cash.

SEC. 998. When any jury shall report, as provided in the last preceding section, it shall be the duty of said court to cause said company to be notified that such report has been made, and if said company shall, within fifteen days after receiving such notice, deposit with the county clerk the full amount of money at which any lands may have been appraised or valued by the jury appointed for that purpose, then and in that event said company shall be entitled to the use and possession of such lands so appraised and valued. *Provided*, That said court shall, before said company shall be entitled to the use or possession of any lands as in this section provided, make an order that the amount deposited with the clerk as aforesaid shall be paid to the owner or owners of such lands.

SEC. 999. When any lands shall have been so appraised and valued, and when a due report of such appraisement shall have been made, and when the amount of money shall have been deposited with the clerk and ordered to be paid as hereinbefore provided, it shall be the duty of said court to make an order upon the records that the lands so appraised shall vest in and belong to the company petitioning, as provided in section 996; said order shall contain a description of said lands, the amount at which they were valued by the appraisers, the fact that said amount was deposited with the clerk and ordered to be paid over to the original owner or owners, the date of said deposit and order, the names of the said original owner or owners, and the corporate name of the company.

SEC. 1000. Said order, when so made and certified by the said court, shall be recorded as other deeds of conveyance, and when so made, certified and recorded, it shall operate as, and have in law the effect of, a conveyance in fee

(y) See *art. XII. sec. 9, Const.*

simple from the original owner or owners to the company of the lands named and described in said order.

SEC. 1001. Nothing in this act shall prevent such company from making private contracts and purchases of lands from such owners as may be most agreeable to both parties. *Act March 26, 1869.*

IV.—INSTITUTIONS OF LEARNING.

SECTION

1002. Corporation of institutions of learning, who may form.

1003. Articles of association to specify purpose of.

1004. First meeting of, how and by whom called.

1005. Trustees, who; officers elected by; failure to elect.

1006. Corporate powers; powers of officers.

1007. Gifts and grants not to be diverted.

SECTION

1008. Students not to be furnished, what; penalty; places of vice may be prohibited, how; penalty.

1009. Degrees, may confer.

1010. Charter, how and from whom obtained.

TRUSTEES MAY CHANGE NAME AND AMEND CHARTER.

1011. Trustees may change name and amend charter.

1012. Amended charter filed and recorded, where.

SECTION 1002. Any number of persons, the multiple of three, not less than nine nor more than twenty-four, who have associated, or shall associate, according to the provisions of this act, under any name assumed by them, for the purpose of founding institutions of learning, and who shall comply with all the provisions of this act, shall, with their successors, constitute a body corporate under the name assumed by them in their articles of association (*).

SEC. 1003. The purpose for which every such incorporation shall be established shall be distinctly specified in their articles of association, and it shall not be lawful for said corporation to divert or appropriate its funds for any other purpose.

SEC. 1004. When the requisite number of persons shall have associated, according to the provisions of this act, any three of them may call the first meeting of the corporation, by giving notice thereof to each member of the association, by written or printed circular at least ten days before the time of such meeting, when they shall elect the necessary officers, and a majority of such members shall constitute a quorum.

SEC. 1005. The persons thus associated shall be the trustees of the proposed institution, and shall elect annually their officers from their own number, and one-third of the whole number of said trustees shall annually be retired from office, said number to be determined by lot, and others, or the same persons, be elected to fill the vacancies. If an election of trustees shall not take place at the annual meeting, such corporation shall not thereby be dissolved, but an election may be held at any time within one year from date of the regular meeting; all such elections to be by the unretired trustees.

SEC. 1006. The corporation thus formed shall have perpetual succession, and be empowered to fill all vacancies occurring in the same by removal, death or expiration of term of office; and shall have power to sue and be sued, to

(*) SECS. 1002 and 1010 will probably be regarded as superseded by the later enactment found in subdivision VI. But the repeal of the former by implication does not appear to be so obvious as to warrant their omission. See SECS. 1023-1025.

contract and be contracted with, to make and use a common seal, and to alter the same at pleasure, to buy and sell, and to take and hold real and personal property, and to make such laws for its own government as may be deemed proper. *Provided*, that the same shall not conflict with the constitution and laws of the United States, or the constitution and laws of the State of Arkansas. The said corporation or board of trustees shall be charged with the government of the institution established by its agency, and the appointment of its professors and instructors, and the compensating of the same, and may delegate its power of government to the president and faculty of the institution established, or to an executive committee of not less than three of its own members.

SEC. 1007. No gift, grant or devise made to such institution for a particular purpose shall be applied to any other purpose.

SEC. 1008. To protect the youth assembled at such institution, while removed from the customary restraints of home and parental watch-care, it is hereby declared to be a misdemeanor to entice any student of such institution into the practice of gaming, or to furnish any student any device or instrument for gaming, or any intoxicating liquors of any kind whatever. And if said institution be located in a city or any incorporated town or village, then upon a majority of the legal voters embraced in the territory within three miles of said institution so deciding by petition to the county court, any billiard room or bowling alley, or race course, or any device or instrument for gaming, or any brothel or house of ill-fame, or theatrical or circus exhibition, within three miles of the site of said institution shall be prohibited by said court, and any person who shall violate such regulation established by said court shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or imprisoned in the county jail not less than ten days nor longer than three months, or both.

SEC. 1009. All institutions incorporated as colleges or universities shall have power to confer the customary degrees and grant the usual diplomas conferred by such institutions.

SEC. 1010. To secure legal existence by act of incorporation, the persons desiring to become a corporate body as the trustees of a university or college shall prepare such charter for the proposed institution as may be by them desired, and shall present the same to the governor and secretary of state and superintendent of public instruction. If said charter be found to be in accordance with the provisions of this act, they shall issue to said board of trustees a certificate appended to a copy of the aforesaid charter, with the seal of the state attached, said certificate stating that the accompanying charter is granted to the said board of trustees, they having complied with the provisions of this act, and are thereby constituted a board of trustees of said institution, and invested with all the powers prescribed in its charter, it being understood that the course of study of such university or college shall always be equivalent to the customary collegiate course of such institutions. *Provided*, a majority of such board, composed of the governor, secretary of state and superintendent of public instruction, shall have authority to grant such charter. A copy of such charter and certificate shall also be filed with the secretary of state, and a record made of the filing of the same. Trustees of academies and seminaries may secure incorporation by filing their charters or articles of association with the secretary of state, as prescribed for business corporations. *Act March 27, 1871.*

TRUSTEES AUTHORIZED TO CHANGE NAME AND AMEND CHARTER.

SEC. 1011. Whenever the trustees of any private academy, college or institute of learning, incorporated according to law, are desirous of changing its name, or the provisions of its charter, they may meet in council, at their regular place of transacting business, and change its name, or the provisions of the charter thereof. *Provided*, that a majority of all the trustees thereof shall consent to such change of name, or of the provisions of such charter, and that this shall not be done without due notice of such meeting and the intention thereof be given to the respective trustees at least twenty days before the time of such meeting.

SEC. 1012. When such change of name or of the provisions of such charter is made, a duly certified copy of the same shall be made out by the secretary of such meeting, and filed in the recorder's office of the county wherein such incorporated academy, college or institute of learning is situated, and duly recorded therein, and the recorder shall transmit a duly certified copy thereof to the secretary of state, who shall file it in his office; and the expense of these proceedings shall be paid by the trustees of the college, academy or other institute of learning. *Act July 23, 1868.*

V.—BUREAUS OF IMMIGRATION.

SECTION

- 1013. Who may form, and powers.
- 1014. Certificate, by whom signed; where filed.
- 1015. Object of.
- 1016. By-laws.

SECTION

- 1017. Directors and officers, when chosen; term.
- 1018, 1019, 1020. Directors, powers and duties of.
- 1021. Duties of officers generally.
- 1022. Report, to whom and when made.

SECTION 1013. Any number of persons may associate and become incorporated for the purpose of aiding, to encourage, procure and protect immigration to and within the State of Arkansas, with power to make, hold and use a common seal; also to contract and be contracted with, to sue and be sued, plead and be impleaded, answer and be answered in all courts of competent jurisdiction; and they shall have all other powers and privileges necessary to fulfill the objects of their incorporation.

SEC. 1014. Such persons forming an association under this act shall file in the office of the secretary of state, and also in the recorder's office of the county where such association may be formed, a certificate in writing, signed by the board of directors of such association, expressing their intention to create and form such bureau of immigration, which certificate shall also comprise a copy of the constitution and by-laws adopted by them.

SEC. 1015. The object of such institution shall be to provide for the encouragement of immigration to the State of Arkansas, and to aid and protect immigrants on their arrival in and passage through this state.

SEC. 1016. Such associations shall make by-laws in accordance with their objects. *Provided*, that such by-laws be not in contravention of the laws of this state or the laws and constitution of the United States.

SEC. 1017. At the annual meeting of such association there shall be chosen a board of directors and such number of officers as the by-laws may provide, which officers and directors shall hold their respective offices for one year and until the regular annual meetings of the association, when their successors shall be chosen. The association shall, at their first annual meeting, fix the time for holding their subsequent annual meetings.

SEC. 1018. It shall be the duty of the board of directors to present to the association, at every annual meeting, or at any time the by-laws of such institution may provide, a full report of their proceedings, and give a faithful exhibit of the state of the institution with regard to its financial and other interests.

SEC. 1019. The directors shall have power, and it shall be their duty, to receive funds and donations from whatever source. They shall also have power, and it shall be their duty, to fix the rates of subscriptions of members; to appoint and employ all officers and agents requisite to promote the object of such institution, and to remove any and all of them as the interests of such institution may require.

SEC. 1020. The directors shall be authorized to expend such amount of the funds under their control as they may deem expedient for the printing and distribution of pamphlets or other papers for the instruction of immigrants, and for the aid and assistance of immigrants, whenever they may deem proper.

SEC. 1021. The specific duties of the directors, officers and members of such associations, and the mode by which persons may become members of them, shall be prescribed by their by-laws.

SEC. 1022. It shall be the duty of each company organized under this act to report to the commissioner of immigration, as soon as it is formed, the names and number of the officers elected, and to forward therewith a copy of their by-laws. They shall also make a quarterly return to him of the exact standing and condition of their respective associations. *Act July 18, 1868.*

VI.—CORPORATIONS FOR BENEVOLENT PURPOSES— FAIR ASSOCIATIONS, ETC.

SECTION

- 1023. Benevolent and other associations; how incorporated.
- 1024. Articles of, where to be filed; petition for incorporation, etc.
- 1025. Certificate of incorporation.
- 1026. Amendments to constitution, when and where filed.
- 1027. First meeting of corporation.

SECTION

- 1028. Management of association.
- 1029. Powers and rights.
- 1030. Record of proceedings.
- 1031. Fees of clerk circuit court.
- 1032. Fair associations, etc., how incorporated.
- 1033. No profits or dividends to be declared or paid by.
- 1034. May be incorporated under other laws.

SECTION 1023. Any lodge of Freemasons or Odd Fellows, divisions of Sons of Temperance or any grange of the Patrons of Husbandry, or any co-operative or other association organized for benevolent purposes or for the mutual benefit of its members or for the promotion of any other good and useful object, or

any library company, school, college, medical, mechanical, agricultural or other association organized for the promotion of literature, education, science or art, or any association organized for the promotion of bodily or mental health, and all societies organized to promote either or all of the above named objects, and for all other similar purposes by whatever name they may be known, consisting of not less than three persons, and also any association of merchants and others in any incorporated city organized not for pecuniary profit, but as a board of trade or chamber of commerce, or of any special branch thereof in such city, consisting of not less than nine persons, may be constituted and declared a body politic and corporate, with all the privileges and powers and subject to all the liabilities contained in this act.

SEC. 1024. Any association of persons desirous of becoming incorporated, under the provisions of this act, shall file with the clerk of the circuit court and recorder for the proper county a copy of their constitution or articles of association and a list of all the members, together with a petition to said court for a certificate of incorporation under the provisions of this act.

SEC. 1025. Said clerk shall enter of record said constitution or articles of association and accompanying petition and list of names, and shall issue to said association, under the seal of said court, a certificate in the following form, to wit: "Whereas A, B, C, D, E, F, and others, have filed in the office of the clerk of the ——— court of ——— county their constitution or articles of association in compliance with the provisions of the law, with their petition for incorporation, under the name or style of ———, they are therefore hereby declared a body politic and corporate, by the name and style aforesaid, with all the powers, privileges and immunities granted in the law thereunto appertaining.

[SEAL.]

"Attest: ———, clerk of the circuit court of the said ——— county and *ex officio* recorder."

SEC. 1026. All associations incorporated under the provisions of this act shall file a copy of all amendments to their constitution or articles of association, certified as such, with the clerk of said court, within sixty days after their passage.

SEC. 1027. The first meeting of any such corporation shall be called, organized and held in the manner prescribed in the constitution or articles of association of said corporation.

SEC. 1028. Any such corporation shall have power to raise money in any manner agreed upon in its constitution or articles of association. The forms of government or management of such corporations shall also be such as are prescribed by their constitution or articles of association.

SEC. 1029. Such corporations shall have such powers of suing and being sued, buying, holding and selling property, real and personal, and of otherwise carrying out the purposes and objects of their organization as are possessed by other corporations and which may be necessary to their efficient management and the promotion of their purposes.

SEC. 1030. It shall be the duty of the clerk or secretary of any such corporation to keep a fair record of the proceedings of such corporation in a book provided for that purpose, and which shall be at all times open to the inspection of the members of such corporation.

SEC. 1031. The clerk of the circuit court shall receive for his services under the provisions of this act such fees as are allowed by law for similar services. *Act Feb. 3, 1875.*

SEC. 1032. Agricultural and mechanical fair associations, and other associations of a public nature and designed to promote the public good, may be constituted bodies politic and corporate in the manner now provided by law for "corporations for manufacturing and other lawful business," and the capital stock may be divided and held in shares of two dollars each.

SEC. 1033. No profits or dividends shall ever be declared or paid under this act; *provided*, dividends may be paid to the amount of money paid in by the stockholders on their respective shares.

SEC. 1034. This act shall not be construed to prohibit such associations from being chartered and incorporated with the powers and privileges and in the manner now provided by law. *Act Dec. 14, 1875.*

VII.—DISSOLUTION OF CORPORATIONS.

SECTION 1035. If any corporation shall expire or cease to exist, either by its own limitation, judicial judgment of forfeiture of charter, or by legislative act, the common law in relation to corporations shall not be in force in relation thereto, but the goods and chattels, lands, tenements and hereditaments, and every right or profit issuing out of or appertaining thereto, moneys, credits and effects of such corporation, shall immediately vest in the state in trust for the uses and purposes by said charter contemplated; and each, every and all right, upon the expiration or dissolution of said corporation, shall be and is in abeyance until the action of the legislature shall be had thereon, unless provisions shall be made by law for the management of said corporation fund in contemplation of such dissolution (*). *Act Jan. 11, 1843.*

(*) See *Curran v. State of Arkansas*, 15 Howard, 304, overruling same case, 12—321; and see *Angell & Ames on Corporations*, § 779, 779 a; and see SEC. 991.

CHAPTER XXX.

COSTS.

SECTION

SECURITY FOR.

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 1038. A plaintiff becoming a non-resident must give.
 1039. Guardians and assignees, when to give.
 1040. Additional security for, when and how obtained.
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- COSTS, WHEN AND AGAINST WHOM ADJUDGED.
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POOR PERSONS MAY SUE WITHOUT PAYING OR SECURING COSTS.

- 1053, 1054, 1055, 1056, 1057, 1058, 1059. Poor persons, when and how they may sue without paying or securing costs.

COSTS IN CIRCUIT COURT ON APPEALS FROM JUSTICES.

- 1060, 1061. On appeal from a justice, when, how adjudged.

TAXATION OF COSTS, TENDER.

1062. Clerk to tax all bills of costs.
 1063. Tender, effect of, on.
 1064. Retaxation of.

SECURITY FOR (*).

SECTION 1036. A plaintiff who is a non-resident of this state, or a corporation other than a bank created by the laws of this state, before commencing an action shall file in the clerk's office a bond, with sufficient surety, to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the defendant or to the officers of the courts (a).

SEC. 1037. An action in which a bond for costs is required by the last section, and has not been given, shall be dismissed on the motion of the defendant at any time before judgment, unless in a reasonable time to be allowed by the court after the motion is made therefor such bond is filed, securing all past and future costs; and the action shall not be dismissed or abated if a bond for costs is given in such time as the court may allow.

SEC. 1038. If the plaintiff in an action, after its institution, becomes a non-resident of this state, he shall give security for costs, in the manner and under the restrictions provided in the preceding sections of this chapter.

(*) As to security for costs in cases of contested election, see SECS. 2727-2729.

(a)

FORM OF BOND.

Pulaski Circuit Court.

John Smith
 against
 Richard Jones. } Bond for costs.

We undertake that the plaintiff, John Smith, shall pay to the defendant, Richard Jones, and to the officers of the court, all costs that may accrue to them in this action, either in the Pulaski Circuit Court or any other court to which it may be carried.

Approved: _____

_____, Clerk.

SEC. 1039. A guardian or next friend suing for an infant or person of unsound mind, and every plaintiff suing as an assignee, except an indorsee of a bill of exchange or a promissory note negotiated before maturity, when insolvent, may be required to give security for costs; and on failure to do so in a reasonable time after it is directed by the court, upon the motion of the defendant, his action shall be dismissed (b).

SEC. 1040. In an action in which a bond for costs has been given, the defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's bond has removed from the state, or is not sufficient for the amount thereof, it may dismiss the action, unless, in a reasonable time, to be fixed by the court, sufficient security is given by the plaintiff.

SEC. 1041. Where process is issued in an action by the direction of an attorney for a plaintiff who is required, by section 1036, to give security for costs, but who has failed to do so, the attorney shall be liable as surety for the costs of the action until a bond is given; and his liability may be enforced by orders of court, and by proceedings as for contempt, if they are not obeyed. *Civil Code, secs. 698-703.*

COSTS, WHEN AND AGAINST WHOM ADJUDGED.

SEC. 1042. If the plaintiff recover judgment he shall have judgment for costs against the defendant (c).

SEC. 1043. If the plaintiff shall be nonsuited, or discontinue his action after the appearance of the defendant, or final judgment shall go against him, then the defendant shall have judgment for costs against the plaintiff (d).

SEC. 1044. When there are several causes of action in a complaint, and any of them shall be adjudged insufficient, or a verdict, on any issue joined thereon, shall be found for the defendant, costs shall be awarded at the discretion of the court.

SEC. 1045. In all actions of trespass, if, upon the trial of the issue, or inquiry of damages, any damages be found for the plaintiff, he shall recover his costs, and in all other actions which may be prosecuted in any court, the subject matter of which shall be cognizable before such court, but the damages recovered shall be below the jurisdiction of the court, the plaintiff shall recover his costs.

SEC. 1046. When several persons are made defendants to any action of trespass, assault and battery, false imprisonment, detinue, replevin, trover or ejectment, and one or more of them shall be acquitted, every person so acquitted shall recover his costs, in like manner as if such verdict of acquittal

(b) An administrator is not an assignee within the meaning of this section. *Tucker v. West*, 31—643.

(c) Where suit is brought against two, and discontinued as to one, judgment against the other for all costs of the suit is erroneous. *Ashley v. Hyde & Goodrich*, 6—92.

See also *Ferguson v. State Bank*, 11—512.

(d) If the defendant is not served with process, and does not appear, no judgment can be given in his favor for costs. *Elliott & Redman v. Bank of the State*, 4—437. See as to case of defendant who fails to complete the performance of his contract until after suit is brought, *Quartermous v. Kennedy*, 29—544.

In equity the burden of costs is always subject to the discretion of the chancellor, and does not necessarily fall on the party failing. *Jones v. Graham*, 36—383.

Payment of the debt sued for during the pendency of the suit will not bar a judgment against the defendant for the costs. *Greenhaw v. Arnold*, 38—461.

had been in favor of all the defendants, unless it shall be certified by the court that there was reasonable cause for making such person a defendant to such action.

SEC. 1047. If any person shall sue out a writ of error, or take an appeal to review the judgment of any circuit court, and the judgment of such court shall be affirmed, or the writ of error or appeal dismissed, discontinued or quashed, or the plaintiff in error, or appellant, be nonsuited, the defendant in error, or appellee, shall recover his costs; and if the judgment be reversed the plaintiff in error, or appellant, shall recover his costs (e).

SEC. 1048. When a suit shall be brought in the name of one person to the use of another, the person to whose use the action is brought shall be liable for the payment of all costs which the plaintiff may be adjudged to pay, and execution may be issued therefor.

SEC. 1049. In all cases where costs are given, the party to whom the same are adjudged may have execution therefor.

SEC. 1050. In all cases where either party shall be adjudged to pay costs, before final judgment, the party in whose favor such costs are adjudged may have execution therefor immediately, as upon final judgment.

SEC. 1051. In all cases where there is security for costs, or where the attorney is liable for costs, or where the action is brought to the use of another, in which the plaintiff shall be adjudged to pay the costs, judgment may be rendered against such security, attorney or person for whose use the action was brought on motion of the party entitled to such costs, notice of such motion having first been given to such security, attorney or other person. *Rev. Stat., chap. 34.*

SEC. 1052. In any civil suit prosecuted by the state for her own benefit, the clerks, sheriffs and other officers shall be entitled to the same fees as in other civil cases; and whenever the state shall become liable to pay any such costs, it shall be the duty of the auditor, upon presentation of the certificate of the attorney-general that such costs have accrued, and that the state is liable therefor, and the amount claimed is just, to draw his warrant on the treasurer for the amount so certified to be due, which shall be paid by the treasurer out of any fund appropriated for that purpose (f). *Act Dec. 21, 1850.*

POOR PERSONS MAY SUE WITHOUT PAYING OR SECURING COSTS.

SEC. 1053. Every poor person not being of ability to sue, who shall have a cause of action against another, may petition the court in which the action is pending, or in which it is intended to be brought, for leave to prosecute his suit as a poor person, and to have counsel assigned to conduct his suit.

SEC. 1054. Such petition shall state:

First. The nature of the suit brought, or intended to be brought.

Second. That the applicant is not worth ten dollars over and above his wearing apparel necessary for himself and his family, and excepting the subject-matter of the action when not in possession thereof.

(e) Where the circuit court had no jurisdiction of a cause, the supreme court on appeal can render no judgment for such costs as accrued in the court below; but it is proper to render judgment against the party bringing the suit for the costs made in the supreme court. *Hightower v. Handlin & Venneys, 27—20.*

(f) But the state pays no costs in actions for the recovery of moneys belonging to the school fund. SEC. 6133.

SEC. 1055. Such petition shall be verified by the applicant's own affidavit, and accompanied by the certificate of some attorney at law of the court that he has examined the case and is of opinion that such poor person has a good cause of action.

SEC. 1056. The court to which such petition shall be presented, if satisfied of the facts alleged, and that the applicant has a meritorious cause of action, may by rule admit him to prosecute his suit as a poor person, and may assign him counsel, who shall do his duty therein without taking any fee or reward therefor.

SEC. 1057. Every person so admitted may prosecute his suit without paying any fees to the officers of the court, and shall not be prevented from prosecuting the same by reason of his being liable for the costs of a former suit brought by him against the same defendant.

SEC. 1058. No person shall be permitted to prosecute any action of slander, libel or malicious prosecution as a poor person.

SEC. 1059. If the person so prosecuting as a poor person be guilty of any improper conduct in the prosecution of his suit, or of any willful or unnecessary delay, the court may, in its discretion, annul the order admitting him to prosecute as a poor person; and he shall thereafter be deprived of all the privileges conferred by such order.

COSTS IN CIRCUIT COURT ON APPEALS FROM JUSTICES (g).

SEC. 1060. When an appeal shall be taken from a judgment of a justice of the peace in favor of the appellee, costs shall be adjudged in the following cases:

First. If, on the trial *de novo*, the appellee shall recover as much or more than the amount of the judgment, or if judgment be affirmed, the appellant shall pay all the costs.

Second. If the judgment in the circuit court shall be in favor of the appellant, the appellee shall pay the costs of both courts.

Third. If the appellant shall, at any time before his appeal is perfected, tender and offer to pay to the appellee any portion of the judgment, which shall not be accepted in satisfaction, and the appellee shall not, in the appellate court, recover more than the amount so tendered and refused, he shall pay the costs of the appellate court.

Fourth. If no such tender shall have been made, and the appellee recover any sum in the appellate court, or if, after such tender and refusal, the appellee shall recover more than the amount tendered, the appellant shall pay the costs in both courts (h).

SEC. 1061. If such appeal shall be from a judgment in favor of the appellant, costs shall be adjudged, in the following cases, as follows:

First. If the judgment appealed from be affirmed, or, upon a trial *de novo*, the appellant shall not recover more than the judgment below, he shall pay the costs in the appellate court.

(g) Where a justice of the peace has no jurisdiction, none is conferred on the circuit court by appeal; and it is error in dismissing the case to render judgment against the appellant for costs. *Gregory v. Williams*, 24-177; *Touhy & Green v. Rector*, 26-315.

(h) See *Latta v. Dodd*, 23-59; *Jones v. Spencer*, 36-82.

Second. If, in the appeal, the appellant recover nothing, or the judgment be against him, or for a less sum than was recovered in the court below, he shall pay the costs in both courts.

Third. If the appellant recover more than the judgment below, he shall recover costs in both courts.

TAXATION OF COSTS—TENDER.

SEC. 1062. The clerk shall tax and subscribe all bills of costs arising in any cause or proceedings instituted or adjudged in the court of which he is clerk agreeably to the fees which shall, for the time being, be allowed by law; and shall, in no case, allow any item or charge unless the service for which it was made was actually performed in the cause.

SEC. 1063. In all actions where tender shall be made and full payment offered, by discount or otherwise, in such specie as the party, by contract or agreement, ought to take, and the party to whom such tender shall be made doth refuse the same, and afterward sue for the debt or goods so tendered, the plaintiff shall not recover costs in such suit; but the defendant shall recover costs in the same manner as if judgment had been rendered in his favor, on the merits of the case (i).

SEC. 1064. Any person aggrieved by the taxation of any bill of costs may, upon application, have the same retaxed by the court in which the action or proceeding was had; and in such retaxation all errors shall be corrected by the court; and if the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall forfeit all his fees, and shall also pay to the party aggrieved the whole amount which he may have paid by reason of allowing such unlawful charge (j). *Rev. Stat., chap. 34.*

(i) The effect of a tender is to save cost; but, in order to be availing, it must be followed up and the money brought into court. *Hamlet v. Tullman and Graves*, 30—505.

(j) It is within the power of the circuit court, in the exercise of a sound discretion, to disallow to the plaintiff any costs which he has caused unreasonably and unnecessarily to be accumulated; and the judgment of the court below, in the exercise of such discretion, should not be overruled by this court, except in cases of manifest error and abuse of power. *Meadows v. Rogers*, 17—361.

CHAPTER XXXI.

COUNTIES (*).

SECTION

1065. All demands against to be presented for allowance to county court; appeals from order of court.

1066. Proceedings on reversal of judgment, etc.

1067. Demands of counties; suits thereon, how brought; costs, how paid.

1068. Deeds, etc., to counties, declared valid.

SECTION

1069. Commissioner to dispose of real estate.

1070. Notes, bonds, etc., declared valid.

FORMATION OF NEW COUNTIES.

1071. By petition.

1072. Affidavit to accompany petition.

SECTION 1065. Hereafter all persons having demands against any county shall present the same, duly verified according to law, to the county court of such county for allowance or rejection (†). From the order of the court thereon appeals may be prosecuted as now provided by law.

SEC. 1066. If on any such appeal the judgment of the county court is reversed, the judgment of reversal shall be certified by the court rendering the same to the county court, and the county court shall thereupon enter the judgment of the superior court as its own.

SEC. 1067. When a county has any demand against any person or corporation suit thereon may be brought in the name of the state for the use of the county (a). In all such actions all costs and expenses not recovered from the defendant shall be paid by the county. *Act Feb. 27, 1879, secs. 2, 3.*

SEC. 1068. All deeds, grants and conveyances made and duly acknowledged and recorded, as other deeds of conveyance, to any county or to the commissioners of any county or any other person, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid, to all intents and purposes, to vest in such county, in fee simple or otherwise, all such right, title, interest and estate as the grantor in any such deed or conveyance had at the time of the execution thereof in the lands conveyed and was intended thereby to be conveyed.

SEC. 1069. The county court may, by an order to be entered on the minutes of said court, appoint a commissioner to sell and dispose of any real estate of the county, and the deed of such commissioner, under his hand, for and on behalf of such county, duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey to the purchasers all the right, title, interest and estate whatever which the county may then have in and to the premises to be conveyed.

SEC. 1070. All notes, bonds, bills, contracts, covenants, agreements or writings whereby any person is or shall be bound to any county, or the com-

(*) See *Eagle v. Beard*, 33—497; *Pulaski County v. Judge of Saline County*, 37—339; *Pulaski County v. Reeve*, 42—54.

(†) Sec. 1 of the act of Feb. 27, 1879, expressly repealed all laws declaring counties corporations and authorizing them to sue and be sued.

(a) Under this section a suit may be prosecuted in the name of the state, for the use of a county, to annul and cancel an illegal and fraudulent lease made by the county judge of the county property. *State, use, Garland County, v. Baxter*, 38—462.

missioners of any county, or to any other person, in whatever form, for the payment of any debt or duty, or the performance of any matter or thing, to the use of any county, shall be valid and effectual, to all intents and purposes, to vest in said county all rights, interest and actions which would be vested in any individual if any such contract had been made directly to him. *Rev. Stat., chap. 35, secs. 4, 5, 6.*

FORMATION OF NEW COUNTIES (b).

SEC. 1071. No petition shall be finally acted on which prays for the creation of a new county, the change of a county line, or which may affect the rights and interest of any person, unless a copy of such petition be set up at the court-house door of the county or counties to be affected thereby, and also one copy in the most public place in each township in such county or counties, forty days before such petition shall be presented to the general assembly.

SEC. 1072. Every such petition shall be accompanied by the affidavit of some creditable person stating that the notice required in the preceding section was given in the manner prescribed. *Rev. Stat., chap. 114.*

(b) No county now established shall be reduced to an area of less than six hundred square miles nor to less than five thousand inhabitants; nor shall any new county be established with less than six hundred square miles and five thousand inhabitants. *Provided*, that this section shall not apply to the Counties of Lafayette, Pope and Johnson, nor be so construed as to prevent the general assembly from changing the line between the Counties of Pope and Johnson. *Art. XIII, sec. 1; see secs. 2 and 4 of same article.*

When a county is divided the old county will, without statutory provision, retain the property and remain liable for the debts of the county, and the severed part or new county will be released; but it is competent for the legislature to apportion the property and the burden between the old and the new counties as it may deem proper and compel taxation for that purpose. *Eagle v. Beard*, 33—497; *Lee County v. State*, 36—276; *Pulaski County v. County Judge of Saline County*, 37—339.

An act of the legislature reducing a county below six hundred square miles is unconstitutional. *Bittle v. Stuart*, 34—224.

CHAPTER XXXII.

COUNTY BONDS.

SECTION

PURCHASE OF BY TREASURER.

1073. Surplus of fund to pay interest on, how invested.
 1074. Sale of bonds; time and place of receiving bids for, how advertised.
 1075. County treasurer, how to purchase.
 1076. Treasurer's report of purchase, etc.
 1077. Bonds purchased, how canceled; commission of treasurer.

MAY BE ISSUED FOR FUNDING PURPOSES.

1078. County court may issue funding bonds; rate of discount, interest, etc.
 1079. Discretion of court to issue or not; duties of court.
 1080. Denomination of bonds; when payable, interest, etc.

SECTION

1081. Bonds, how and when presented for cancellation.
 1082. Bonds, how canceled; record of bonds canceled and issued.
 1083. Tax to pay bonds; when levied and payable in what.
 1084. Bonds may be called in before maturity; sinking fund, how sold.
 1085. Notice of sale, how given.
 1086. County treasurer to conduct sale; bids, how paid; bonds purchased, vouchers for what amount.
 1087. Bonds received for sinking fund to be presented to county court; cancellation of, how made.
 1088. What laws not repealed.

PURCHASE OF BY TREASURER.

SECTION 1073. If at any time after the annual settlement of the treasurer of any county of this state it shall appear that there is a surplus of the fund collected for the payment of interest on the public debt, after the full payment of all the interest due upon the bonded indebtedness of said county, it shall be the duty of the county court immediately, if the court is in session, and if not in session, at the next regular term thereof, to order the county treasurer to invest such surplus fund in the bonds of the county as is hereinafter provided.

SEC. 1074. Upon the making of the order contemplated in the preceding section it shall be the duty of the county treasurer to give thirty days' notice by advertisement in some newspaper published in his county, and if there be no such newspaper then by handbills posted in at least five of the most public places of said county, of the time and place when and where public bids will be received for the sale of the bonds of said county.

SEC. 1075. Upon the day so fixed for the purchase of said bonds the treasurer shall attend at the court-house door of his county, and shall receive bids, and shall purchase the bonds offered at the lowest rate, and shall pay for and receive the same, at the same time taking a receipt from the seller of such bonds, setting out the amount of money received and for what amount of bonds sold.

SEC. 1076. At the next term of the county court after such purchase by the treasurer of any bonds of his county, it shall be the duty of the treasurer to make a report to the court showing the amount of bonds purchased and the amount of interest accrued at the time of such purchase, the price at which such purchase was made, exhibiting the receipts of the sellers of such bonds, and bringing the bonds purchased into court.

SEC. 1077. The county court shall write or stamp across the bonds, "Canceled," signing the same officially, defacing the coupons at the same time, and

deliver the bonds and coupons to the sheriff, whose duty it shall be to burn the same in the presence of the county judge, county clerk and treasurer; and the treasurer shall be entitled to credit for the amount by him paid for the bonds and coupons purchased, together with one per cent. as commission for conducting such purchase. *Act December 13, 1875.*

MAY BE ISSUED FOR FUNDING PURPOSES.

SEC. 1078. The county courts of the several counties in this state are hereby empowered to issue bonds of their respective counties in lieu of any bonds heretofore issued under the provisions of any law of this state, and overdue coupons thereon, and any interest on such bonds due at the time the holder shall present the same for the purpose of funding the same, whether such interest be evidenced by coupons or not, and whether the bonds be due or not, at any rate of discount below the face value, or at face value thereof, with interest to date of funding included, as may be agreed upon by the holders of said bonds and said courts, for a period of not less than five nor more than twenty years, bearing interest from date until paid, at a rate of interest not exceeding that which they heretofore bore (a).

SEC. 1079. It shall be within the judgment and discretion of the county courts as to whether the bonds herein authorized shall be issued or not; but if the courts be of opinion it would be to the financial interest of their respective counties to fund as herein authorized, they shall make orders to the effect that for a period of twelve months, next after the making of such order, any one presenting to said courts, while in session, duly authorized and properly authenticated bonds of their counties, amounting to the sum of twenty-five dollars, principal and interest, shall be entitled to receive in lieu thereof the bond or bonds of said county as herein authorized. *Provided*, that it shall be and is hereby made the duty of the said courts to strictly examine every bond presented for funding, and satisfy themselves that the same has been legally issued before they shall be authorized to issue any bond under the provisions of this act; and should they detect any spurious or illegal bond, they shall not issue any bond therefor; but shall cause a list to be made of the numbers and amounts of such spurious or illegal bonds, and the same shall be filed with the clerks of said courts, which filing shall be deemed a sufficient notice to all of the illegality of such bonds, and from that date such illegal bonds shall not be received for any dues to the counties, but shall be deemed wholly null and void.

SEC. 1080. The bonds herein authorized shall be issued in denominations of not less than twenty-five dollars, and shall be made payable in not less than five nor more than twenty years from the date thereof; they shall bear interest at a rate not greater than that they bore before the funding as herein provided for, and shall be made payable at the treasury of the county issuing the same. The interest on said bonds shall be payable annually on the first day of July in each year, for which said bonds shall have coupons attached. *Provided*, That the first coupons shall be made payable on the first day of July of the next succeeding year after which they are issued. *Provided, further*, That should any

(a) See *Brodie v. McCabe*, 33—701.

bond issued under the provisions of this act become due and payable before the date fixed herein for the payment of interest, the court shall attach to such bond a coupon for the interest that will be due at the time of the payment of such bond, and said interest shall be paid at the same time said bonds shall be signed by the county judge and attested by the clerk of the county court, with the seal of his office thereto attached, and the interest coupons shall be signed by the clerk of the county court.

SEC. 1081. After the order shall have been made as provided for in section 1079, any person holding a duly issued bond of any of the counties in this state shall, upon the surrender of the same to the county court of the county issuing the same for cancellation, receive therefor the bond of such county upon such terms as may be agreed upon by the holder thereof and the court, to be issued as herein provided and subject to the restrictions herein expressed. *Provided*, The person presenting the same for cancellation shall present a bond or bonds of the value of twenty-five dollars or more. *And provided, further*, That said bond or bonds shall be presented for cancellation before the expiration of twelve months from the date of the order provided for in section 1079, unless the court shall make a supplemental order extending the time twelve months longer.

SEC. 1082. It shall be the duty of the county courts to duly cancel any bond that shall be presented to such court for cancellation under the provisions of this act, by writing across the face of such bond the word "*Canceled*" in red ink, with the date of such cancellation, which shall be signed by the county judge, and he shall cause the records of the county court to show what bonds were so surrendered, their amount, the date of their issue, to whom issued, and that the same were duly canceled. He shall also cause to be kept a record of the bonds issued under and by virtue of this act, showing to whom issued, their amounts and dates.

SEC. 1083. It shall be the duty of the county courts issuing bonds under the provisions of this act to levy a special tax of sufficient amount to pay the principal and interest of said bonds as they shall become due, not to exceed, together with all other taxes levied during that year, the limit of taxation prescribed in the constitution. Such tax shall be levied and collected in the lawful currency of the United States, and shall not be appropriated to any other purpose than that for which it was levied and collected.

SEC. 1084. Any county court issuing bonds under the provisions of this act, at any time before said bonds become due, may call in the same by paying the principal and interest thereon, due on the same, in lawful currency of the United States; and when the amount collected for the payment of the principal of the bonds issued, as herein provided, shall amount to the sum of five hundred dollars or more, such court may make an order to sell such sinking fund to the highest bidder, and take in payment therefor any bond issued under the provisions of this act.

SEC. 1085. It shall be the duty of the county court to give at least thirty days' notice of the time and place of selling such sinking fund, by posting written or printed advertisements in at least five of the most public places in the county, one of which shall be posted at the court-house door, and by inserting the same for five successive weeks in any newspaper published in the county, if one there be.

SEC. 1086. The county treasurer, or his duly appointed agent, shall conduct the sale of the county sinking fund as herein provided, and he shall receive in payment of any bid the bonds of his county, issued under and by virtue of this act, and at the rate specified in the bid of the holder of such bonds. The bonds so purchased shall be vouchers in his hands for the amount of sinking fund actually required to purchase the same at the rate bid by the holders thereof.

SEC. 1087. It shall be the duty of the county treasurer, if the court be in session, if not then at the next term thereafter, to present the bonds received by him in payment for the sinking fund to the county court for cancellation; and it shall be the duty of the county court, if it be satisfied that the sale of the sinking fund has been honestly, fairly and legally conducted, to cancel said bonds, by writing across the face thereof in red ink the word "*Canceled*," together with the date of such cancellation; and each coupon remaining unpaid shall be canceled by a cross mark in red ink on the face thereof. Such cancellation shall be signed by the county judge, and when so canceled said bonds and coupons shall be burned by the court in the presence of the clerk and treasurer and such other persons as may be present. The clerk shall make an entry of the numbers and amounts of the bonds so burned, and to whom issued, and the rate at which they were bought in for the sinking fund, and the treasurer shall have credit for the amount actually paid out in the redemption of such bonds.

SEC. 1088. Nothing in this act shall be construed to repeal any law which authorizes the county courts to fund unliquidated and outstanding warrants and indebtedness existing prior to the 30th day of October, 1874. *Act March 6, 1877.*

CHAPTER XXXIII.

COUNTY BUILDINGS (*).

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 1090. Fire-proof building for offices of clerks of the courts.
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POOR-HOUSE AND PAUPERS.

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COURT-HOUSE AND JAIL.

SECTION 1089. There shall be erected in each county, at the established seat of justice thereof, a good and sufficient court-house and jail.

SEC. 1090. As soon as the court-house and jail shall be erected, and the circumstances of the county will permit, there shall also be erected a fire-proof building, at some convenient place near the court-house, in which shall be kept the offices of the recorder and of the clerks of the several courts held in such county.

SEC. 1091. Whenever the county court shall think it expedient to erect any of the buildings aforesaid, the building of which shall not be otherwise provided for, and there shall be sufficient funds in the county treasury which may be appropriated to the erection of county buildings, or which are not

(*) All contracts for erecting or repairing public buildings in any county, or for materials therefor, or for providing for the care and keeping of paupers where there are no almshouses, shall be given to the lowest responsible bidder, under such regulations as may be provided by law. *Art. XIX, sec. 16, Const.*

otherwise appropriated, or if the circumstances of the county will permit such court to levy a tax for the erection of said buildings, such court may make an order for the building thereof, stating in such order the amount to be appropriated for that purpose.

SEC. 1092. When such court shall have made an order for the erection of any public buildings, it shall appoint some suitable person as commissioner of public buildings, who shall superintend the erection of the same.

SEC. 1093. The court shall from time to time fill any vacancy that may happen in the office of such commissioner.

SEC. 1094. The court shall designate the place whereon to erect any county building on any land belonging to the county at the established seat of justice thereof.

SEC. 1095. If there be no suitable ground for that purpose belonging to the county, the commissioner of public buildings shall select a proper piece of ground at the seat of justice, and may purchase or receive by donation a lot or lots of ground for that purpose, and shall take a good and sufficient deed in fee simple for the same to the county, and shall make report of his proceedings to the court at its next term.

SEC. 1096. The court shall examine the proceedings of the commissioner, and if it finds the title of such property so purchased to be good, and otherwise approve his proceedings, it shall state the approval of the same on the record, and make an order accepting the same and directing the payment of the purchase money, if any, out of the county treasury.

SEC. 1097. When the ground for erecting any public building shall be designated as aforesaid, the commissioner shall prepare and submit to the county court a plan of the building to be erected, the dimensions thereof and the materials of which it is to be composed, with an estimate of the probable cost thereof.

SEC. 1098. When any plan shall be approved by said court, the commissioner shall advertise for receiving proposals for erecting such building, and shall contract with the person who will agree to do the work on the lowest and best terms, not exceeding the amount so appropriated by the said court.

SEC. 1099. The commissioner shall take from the contractor a bond to the county, with sufficient security, for the performance of the work, at such time and in such manner as shall be agreed on, according to the plan, a copy of which shall be annexed, under a penalty of at least double the amount to be given for erecting the building (a).

SEC. 1100. Such commissioner may let parts of the work to different persons.

SEC. 1101. It shall be the duty of the commissioner to superintend and direct the execution of the work, and to see that the materials employed are good and the work executed according to contract, and to make report of the progress and condition thereof from time to time to the county court.

SEC. 1102. When any installment shall become due to the contractor according to contract, such court shall make an order that the same be paid out of the county treasury.

SEC. 1103. No such order shall be made except on the certificate of the

(a) A failure to take such bond does not affect the jurisdiction of the county court over the subject matter. *Buckner, ex parte*, 9—73.

commissioner that a due proportion of the work has been completed and executed according to the contract.

SEC. 1104. The commissioner of public buildings for any county shall receive such compensation for his services as the county court shall deem reasonable, to be paid out of the county treasury as other county claims are paid.

SEC. 1105. Such court shall have power from time to time to alter, repair or rebuild any county building, and may cause other necessary buildings and fixtures to be erected, as circumstances may require and the funds of the county may admit. And it shall, moreover, take such measures as shall be necessary to preserve all buildings and property of the county from waste or damage. *Rev. Stat., chap. 36, re-enacted and revived by act April 16, 1873.*

POOR-HOUSE AND PAUPERS.

SEC. 1106. Each county court shall have power, whenever it may think it necessary and expedient, to establish a poor-house, and for that purpose to appoint three competent persons to act as commissioners, whose duty it shall be to select a proper site for the same, purchase such quantity of ground therefor as the court may direct, and after their selection shall have been approved by such court, and the ground conveyed to the county, they shall cause such buildings to be erected thereon and make the contract therefor in the manner that the court may direct (b).

SEC. 1107. The said commissioners, before entering on the discharge of their duties, shall take an oath for the faithful and honest discharge thereof.

SEC. 1108. Each county court deeming it expedient to establish a poor-house shall have power to appropriate a sufficient sum of money out of the county revenue to purchase the land and erect all necessary buildings, and may, if necessary, lay and cause to be collected a special tax therefor. *Act Jan. 10, 1851.*

SEC. 1109. After such poor-house is completed, the court shall let it out annually, at such time as it may deem most expedient, to such competent person as will take charge of the same, reside therein, feed, clothe and furnish the necessary medicine and medical attendance to all persons placed therein for the smallest sum; and such person shall be required to give bond and good security, to be approved by the county court, conditioned for a faithful compliance with his contract, which shall be made payable to the county in a penalty double the amount of the bid. *Ib.*

SEC. 1110. Every county in this state shall relieve, maintain and support its own poor, such as the lame, the blind, the sick and other persons who, from age and infirmity, are unable to support themselves, who have no sufficient estate of their own, and who have not removed from any other county for the purpose of imposing the charge of keeping them on any county other than the one in which they last lived.

SEC. 1111. It shall be the duty of every sheriff, coroner, constable and justice of the peace to give information to their respective county courts of any such poor, and such court, if satisfied that they come within the purview and

(b) When the acts of the commissioners are ratified by the court, they become as valid as if done directly by the court. *Pulaski County v. Lincoln*, 9—820.

meaning of this act, shall from time to time, and as often and for as long a time as it may be necessary, provide at the expense of the county for the support and maintenance of such poor persons, and order from time to time the defraying of such expenses by drawing orders on the treasury of the county. *Rev. Stat., chap. 110.*

SEC. 1112. When any non-resident, or any other person coming within the definition of a pauper, shall fall sick or die in any county, not having money or property to pay his board, nursing, medical aid or burial expenses, it shall be the duty of the court to make such allowance therefor as shall seem just. *Act Dec. 21, 1846.*

SEC. 1113. All paupers reported to the county court under the provisions of the three preceding sections shall, upon the court being satisfied that they are paupers, be by order of the court delivered over to the keeper of the poor-house by the sheriff of the county, and shall remain therein under the control of the keeper until discharged by order of the court (c). *Act Jan. 10, 1851.*

PAUPERS MAY BE EMPLOYED AT WORK FOR THE COUNTY.

SEC. 1114. The county court is hereby authorized, whenever it may deem it expedient or the public interests require it, to employ any or all county paupers at any work on behalf of the county. *Provided*, that each pauper may protest against being so employed, and when such protest is made the county court shall not employ the protesting pauper without first obtaining from a practicing physician in good standing as such a certificate stating that said pauper is amply able to do and perform the labor required to be done without danger to his or her health or life. *Act Nov. 5, 1875.*

HOUSE OF CORRECTION, COUNTY COURT MAY PROVIDE FOR BUILDING.

SEC. 1115. The county courts of the several counties shall purchase a farm or tract of land within the boundaries of the county, and provide for the erection on such farm or tract of land a house of correction. *Provided*, that such farm or tract of land shall not be purchased unless the tax-payers of each township in the county shall petition such court to provide for such purchase and a majority of all the tax-payers of the county sign said petition.

SEC. 1116. Such farm or tract of land may be either improved or unimproved land.

SEC. 1117. When said court shall determine to purchase said farm or tract of land, it shall contract for such land on the most favorable terms possible to the county.

SEC. 1118. Said court shall pay for said farm, and for the erection of said house of correction, in the same manner that other public county improvements are paid for.

(c) It is the duty of the county court to inquire into the condition of persons who are in needy and suffering circumstances, whether reported by officers or otherwise, and to determine whether or not they are paupers. *Lee County v. Lackie*, 30—764. In order to charge the county with the support and maintenance of destitute persons, they must first be adjudged paupers by the county court. *Ib.*

The county judge has no authority to adjudge an indigent person a pauper, or to contract for his support or medical treatment, except in term time or while he is holding a county court. *Prewett v. Mississippi County*, 38—213.

See SECS. 3901, 3811, 3815, 3816.

SEC. 1119. It may appoint three discreet persons as commissioners, who shall be tax-payers and qualified voters of this state, to select and agree for the purchase of such farm or tract of land.

SEC. 1120. When said commissioners shall have made such selection and agreement, they shall report their doings to the county court; and if the court shall approve said selection and the stipulations of said commissioners concerning the payment for said land, then said court shall provide for the purchase of the same, and take from the vendor of such land a good and sufficient deed of conveyance for the use of the county.

Building of House, How Contracted For.

SEC. 1121. After such purchase the county court shall cause to be let out to the lowest bidder the contract for building and erecting on said tract of land a house of correction.

SEC. 1122. Said house of correction shall be so constructed as to secure, as nearly as may be, all persons sentenced to confinement therein, and shall be composed of such material and of such form and dimensions as the county court shall direct.

SEC. 1123. All contracts, appropriations and disbursements of money concerning the purchase of such land or farm, and the erection of said house of correction, shall be made according to and be governed by the laws which are now or may hereafter be in force concerning public county contracts, appropriations and disbursements.

SEC. 1124. Such farm or tract of land shall consist of such number of acres as the court may in its discretion determine.

SEC. 1125. The house of correction shall possess such means of ventilation and other sanitary arrangements as will promote the health of the prisoners therein.

SEC. 1126. All persons who shall be convicted of petit larceny, or any other crime cognizable before justices of the peace, and sentenced to imprisonment, shall, after the building of such house of correction, be sentenced to confinement therein instead of the county jail (†); and all persons then confined in the county jail for the crime of petit larceny, or for any other crime cognizable before justices of the peace, shall be transferred by order of the county court to said house of correction.

SEC. 1127. All persons so sentenced shall be compelled to labor on the farm or lands on which said house of correction shall be situated, in such manner as is hereinafter provided and for the term of their imprisonment.

Superintendent.

SEC. 1128. The county court shall appoint a discreet person, who shall be a qualified elector of this state, and who shall be known as superintendent of the house of correction. The court shall fix the compensation of the superintendent.

SEC. 1129. Said superintendent shall have charge of the farm or lands attached thereto, and shall direct the labor of all persons sentenced to confinement therein.

(†) See chap. 39.

SEC. 1130. For neglect of duty, or other improper management of said house of correction, the county court may remove said superintendent.

Discipline.

SEC. 1131. The county court shall from time to time, with the advice of said superintendent, prescribe such rules for the government and discipline of prisoners in said house of correction, and for the discipline and control of the labor of said prisoners, as it shall deem most expedient and wholesome.

SEC. 1132. The superintendent shall be responsible to the court for the correct treatment of all prisoners in said house of correction, and for the faithful enforcement of the rules and discipline governing the same.

SEC. 1133. Prisoners in said house of correction shall labor for such number of hours each day as the court may determine, and said prisoners shall be compelled to perform any and all such labors as pertain to the clearing, improvement and cultivation of the farm or garden, or to mechanical pursuits.

General Management of, etc.

SEC. 1134. The county court shall have a general supervising control over said farm and house of correction, and shall take means to correct any mismanagement of the same.

SEC. 1135. The product of all labor of the prisoners therein shall be applied, under the direction of the court, to the payment of the expenses of the persons so confined and such other expenses as may be necessarily incurred in improving and keeping said house and farm in repair.

SEC. 1136. If the product of the labor of persons so confined shall not be sufficient to defray the expenses indicated in the preceding section, then such deficit shall be supplied out of the county treasury, in such manner as prisoners in the county jail are now supplied.

SEC. 1137. If the product of the labor of such persons shall be more than sufficient to defray such expenses, then the surplus of such product shall be disposed of under the direction of the county court, and the proceeds thereof shall be paid into the county treasury.

SEC. 1138. If any person qualified for superintendent shall propose to the county court in writing to take charge of said house of correction and the farm and land thereto attached, and shall be the lowest bidder for such superintendency and the farm and land thereto attached, and shall agree to pay all expenses of clothing, food and medical aid necessary for the prisoners, and to keep said house and farm in repair, and shall enter into such further agreement and bonds as the county court shall require, then, and in that event, the said court may let out said farm and house of correction to such person for a term not exceeding two years at any one time, and said person so agreeing shall be entitled to receive to his own use and benefit all products of the labor of any and all prisoners therein.

SEC. 1139. Any person agreeing as provided in the preceding section shall be known as the superintendent of the house of correction. *Act July 16, 1868.*

CHAPTER XXXIV.

COUNTY LINES (*).

SECTION

1140. County court empowered to direct surveyor to ascertain county lines.

1141. Copy of such order to be presented to county court of adjoining county.

1142. Surveyors to run lines.

SECTION

1143. Maps or plats of such line to be returned.

1144. One surveyor authorized to run such line if the other fails to attend.

1145. Compensation of surveyors.

SECTION 1140. Whenever it shall appear to the satisfaction of any county court that the boundaries of the county are not sufficiently special and well ascertained, such court shall issue an order to the county surveyor requiring him, on a day and at a place to be therein specified, to proceed* and ascertain, survey and mark such part of such line as may be designated.

SEC. 1141. It shall be the duty of the county court making such order to cause a copy thereof to be presented to the county court of the adjoining county at least ten days before the time appointed for the running and marking of such line, whereupon such court, on receiving the copy of such order, shall issue an order to the county surveyor of such county requiring him to proceed at the time and place appointed and assist in running and marking such line.

SEC. 1142. Such surveyors shall proceed at the time and place appointed to ascertain, survey and mark the line designated in such order, and make return thereof to their respective county courts, which, if approved by such courts, shall be recorded as evidence of the line run.

SEC. 1143. Each surveyor shall return to the county court of his county a map or plat of the line so run and marked.

SEC. 1144. If either of such surveyors shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to survey and mark such line and make his report to the county court, which, being approved by such court, shall be recorded as evidence of the line in controversy, and the line so surveyed and marked shall thereafter be regarded as the true line of the county.

SEC. 1145. The accounts of such surveyors shall be paid by their respective counties, and each surveyor shall be allowed the sum of four dollars for each mile surveyed and marked and five cents per mile for traveling from his place of residence to such line and back. *Rev. Stat., chap. 37.*

(*) In the formation of new counties no line thereof shall run within ten miles of the county seat of the county proposed to be divided, except the county seat of Lafayette County. *Art. XIII, sec. 4, Const.*

The power to change county lines is inherent in the legislature, subject to express constitutional restrictions and the essential requisites of the state which are implied in our frame of government. The consent of a majority of the voters in the part taken off is only required in the case of new counties to be formed out of portions of old ones. *Reynolds v. Holland*, 35—56; *Pulaski County v. County Judge of Saline County*, 37—339.

CHAPTER XXXV.

COUNTY AND CITY WARRANTS.

SECTION

1146. For what taxes and debts receivable.
 1147. County court may call in warrants; order in such case.
 1148. Clerk to furnish order to sheriff; notice to be published, how.
 1149. Warrants not presented barred.

SECTION

1150. County and municipal authorities may call in warrants annually.
 1151. Proceedings on call by cities and towns.
 1152. Duty of court or council on presentation of scrip; appeal.
 1153. What law to govern calls by counties, cities or towns.

FOR WHAT TAXES RECEIVABLE.

SECTION 1146. All county warrants and county scrip shall be receivable for any taxes for county purposes, except for interest on the public debt and for sinking fund, and for all debts due the county by whose authority the same were issued (a); and all city warrants, scrip, acceptances or money shall be receivable for any taxes for city purposes, except for interest tax, and for all debts due the municipal corporation by whom the same were issued, without regard to the time or date of issuance of such warrant, scrip, acceptance or money, or the purpose for which they were issued (b); and it is hereby made the duty of, and authority is hereby conferred upon, the county court of the respective counties, or the judge thereof in vacation, to make all needful orders compelling collectors, both county and municipal, to comply with the provisions and intent of this act. *Provided*, that nothing in this act shall authorize the collector to receive scrip issued since the adoption of the constitution in payment of the tax levied to pay the indebtedness existing before the adoption of the constitution (c). *Act Dec. 14, 1875.*

CALLING IN WARRANTS FOR REISSUE.

SEC. 1147. Whenever the county court of any county may deem it expedient to call in the outstanding warrants of said county, in order to redeem, cancel, reissue or classify the same, or for any lawful purpose whatever, it shall be the duty of said court to make an order for that purpose, fixing the time for

(a) Under the act requiring fines, penalties and forfeitures to be paid into the county treasury, such fines, etc., are to be treated as debts accruing to the county, and are payable in county warrants. *McKibben v. State*, 31—46. See SEC. 5860.

(b) See *Lindsey v. Rottaken*, 32—619. Where an obligation to a city or town expresses that it is to be paid in United States currency, and it is manifest that it was the intention of the parties that money and not scrip should be paid, a tender in scrip is not good. This section does not forbid corporations from contracting specially for payment in money. *City of Helena v. Turner*, 36—577. See SEC. 5733.

(c) See *Loflin v. Watson*, 32—414. Where county warrants tendered in payment of taxes levied to pay county indebtedness existing at the adoption of the constitution of 1874 afford no evidence that the allowance upon which they were issued was for county indebtedness prior to the adoption of that constitution, and are subsequent thereto, and are drawn upon the fund appropriated for county expenditures, the collector should refuse them. *Hughes v. Ross*, 38—275.

The bar of the statute of limitations can not be pleaded to a petition for mandamus to compel a county collector to take county scrip for taxes. *Whitthorne v. Jett*, 39—139.

the presentation of said warrants, which shall be at least three months from the date of such order (d). *Act Jan. 6, 1857, as modified by act Feb. 27, 1875.*

SEC. 1148. It shall be the duty of the clerk to furnish the sheriff with a true copy of said order within ten days after the adjournment of said court, whereupon it shall be the duty of the sheriff to notify the holders of said county warrants to present the same to said court, at the time and place fixed as aforesaid, for redemption, cancellation, reissuance or classification of the same, or for any other purpose whatever specified in the order of said court, by putting up at the court-house door and at the election precincts in each township of said county, at least thirty days before the time appointed by the order of said court for the presentation of said warrants, a true copy of the order of said court in the premises, and by publishing the same in newspapers printed and published in the State of Arkansas for two weeks in succession, the last insertion to be at least thirty days before the time fixed by said court for the presentation of said warrants (e).

SEC. 1149. All persons who shall hold any warrant of said county, and neglect or refuse to present the same as required by the order of the court and the notice aforesaid, shall thereafter be forever debarred from deriving any benefits from their claims. *Act Jan. 6, 1857 (f).*

SEC. 1150. The county court of any county, or the municipal authorities of any city or town, may annually call in the outstanding scrip or warrants of said county, or the floating evidences of indebtedness of said city or incorporated town, for the purpose of canceling and reissuing the same.

SEC. 1151. The law governing such proceedings in a county shall apply with equal force to cities and incorporated towns. The council, recorder and marshal shall perform the duties laid down for the county court, the clerk and sheriff respectively.

SEC. 1152. When the scrip or warrants so called in shall be presented to the court or council, it shall be the duty of said court or council thoroughly to examine the same, and to reject all such evidences of indebtedness as in their judgment their county, city or incorporated town is not justly and legally bound to pay, subject to appeal to the circuit court.

SEC. 1153. The law now in force governing in cases where counties are authorized to call in their floating indebtedness shall apply and govern in proceedings had by counties, cities or incorporated towns under the provisions of this act (g). *Act Feb. 27, 1875.*

(d) An order under this section which gives less than three months from its date to the time appointed for presenting the warrants is invalid, and a scrip holder is not obliged to appeal from it or quash it by *certiorari*, but may compel the collector by *mandamus* to receive his scrip for county taxes. *Fry v. Reynolds*, 33—450; *Howell v. Hoggins*, 37—110.

(e) When the order is published in only one newspaper, the scrip will not be barred by the failure of the holder to present it within the time required by the order, though he have actual notice of it. The notice must be given as required by the statute; but presentation of the scrip is a waiver of the insufficiency of the notice. *Allen v. Bankston*, 33—740.

(f) This act is constitutional, and warrants not presented as required by an order of the county court, made in pursuance of the act, are forever barred. *Parsel v. Barnes & Bro.*, 25—261. The statute is the law of the contracts as to warrants issued after the passage of the act. *Allen v. Bankston*, 33—740; *Cope v. Collins*, 37—649; *Desha County v. Newman*, 33—788.

(g) So much of this act as extends the provisions of the act of January 6, 1857, found in this chapter, to proceedings by cities and towns appears to be in conflict with art. V, sec. 23, of the constitution.

CHAPTER XXXVI.

COUNTY SEATS (*).

SECTION

1154. Consent of voters necessary to establish or change; place of proposed location, how designated.
1155. Of new counties, temporary location, how made.
1156. Petition for change; order for election.
1157. Notice of election, etc., how given.
1158. Poll-books, how returned and compared.
1159. Ballots, how written or printed.

SECTION

1160. Orders of county court when vote is in favor of change; new election, when to be held.
1161. Deed to county; to be made before orders locating, etc.
1162. Commissioners, when appointed and duties of.
1163. Courts, when to be held at new county seat, etc.
1164. No second change of county seat under ten years.
1165. Number of qualified voters in county, how ascertained.

SECTION 1154. Unless for the purpose of the temporary location of county seats in the formation of new counties, it shall be unlawful to establish or change any county seat in this state without the consent of a majority of the qualified voters of the county to be affected by such change, nor until the place or places at which it is proposed to establish or change any county seat shall be fully designated, such designation embracing a complete and intelligible description of the proposed locations, together with an abstract of the title thereto and the terms and conditions upon which the same can be purchased or donated by or to the county. *Provided*, the county court shall not order the election hereinafter provided for, unless it shall be satisfied that a good and valid title can and will be made to the proposed new locations or one of them.

SEC. 1155. The temporary location for the county seat of any new county shall be fixed by the act of the general assembly authorizing the formation and organization of such new county, and such temporary location for the purposes of this act shall be considered the permanent and established location unless changed or removed as herein provided for the change or removal of other county seats.

SEC. 1156. Whenever the qualified voters of any county in this state to the number of one-third thereof shall join in the petition to the county court of such county for the change or removal of the county seat, embodying in the petition the designation and abstract of title and the terms and conditions of the sale or donation, as provided for and required by section 1154, the county court shall order an election to be held at the several voting places in the county, directing that the proposition of the petitioners for the change or removal shall be submitted to the qualified voters.

SEC. 1157. The county court shall also order and require that public notice shall be given of such proposed change or removal, by publication thereof in some newspaper printed in the county, if any there be, and by directing and requiring the sheriff to post up, in hand-bill form, printed copies of such order, in not less than three of the most public places in each township of the county, not less than thirty days before the election at which the proposition for the

(*) See art. XIII, secs. 3 and 4, *Const.*

change or removal is to be voted upon. All of which notices shall be published and continued up until the day of election, and any person defacing, tearing or destroying any of them shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as is now provided by law for defacing, tearing down or destroying public notices or advertisements. *Provided*, that nothing in this act shall be so construed as to amend the act passed by the general assembly in relation to the location of the county site of Izard County.

SEC. 1158. The election provided for in this act shall be understood in the same manner as general elections are required by law to be understood, and the poll-books thereof shall be returned by one of the election officers, to be designated by the judges of election, under seal, to the clerk of the county court within five days thereafter, who shall take to his assistance two justices of the peace of the county, and shall open and compare the polls of such election, and declare the result, and make return thereof to the county court, if it then be in session; if not, to the next term thereof.

SEC. 1159. The ballots of the voters shall have written or printed upon them the words "For Change," or "Against Change," meaning for or against change from the existing location, and the words "For ——" (one of the localities allowed by the act to be voted for, naming and describing the place, to which the change or removal is proposed).

SEC. 1160. If a majority of the qualified voters of the county shall vote in favor of the change from the existing location, and also if a majority of the qualified voters of the county shall vote for one of the places to which it is proposed to change or remove (if more than one be submitted), the county court shall make all necessary orders, providing necessary means, appointing commissioners, etc., to carry into effect the will of such majorities so expressed, without unreasonable delay, according to existing laws not hereby repealed, and the provisions of this act. *Provided*, however, that if such majority of the qualified votes, although given in favor of a change or removal from the existing location, be not given for the place (or one of the places, if more than one place be submitted), to which the change or removal is proposed to be made, the proposition shall be considered as rejected, and it shall be the duty of the county court, at its next regular meeting, to order a new election, to be governed in all respects like the first, except at the second election only the two places having the highest and greatest number of votes at the first election shall be put in nomination and voted for, and all votes cast for other than the two places above designated shall be void, and the place receiving the highest and greatest number of votes shall be and become the county seat (a).

SEC. 1161. Before any of the orders of the county court contemplated by section 1160 shall be made, or if made, before they shall be executed, the vendor or donor of the new location shall make or cause to be made and deliver to the county judge a good and sufficient deed, conveying to the county the land or location so sold or donated in fee simple, without reservation or condition, and also an abstract of the title, papers, deeds and conveyances,

(a) The removal of a county seat is a matter of local concern over which the county court has exclusive original jurisdiction; the circuit court has no authority to determine the result of an election for removal in the first instance, and before the county court has acted in the premises, and where it assumes to do so, a writ of prohibition will lie from the supreme court. *Russell v. Jacoway, Judge, etc.*, 33—191.

and assurances by or through which the title thereof is derived, who shall file the same for record in the recorder's office of such county, to be recorded as other title deeds and papers. Then the place so deeded shall be the permanent county seat, and the title shall be vested in the county.

SEC. 1162. When the deed to the new location shall have been executed, and the title vested in the county, as provided in the preceding section, for the purposes and intention of this act, the county court is hereby authorized and empowered to appoint three discreet citizens of the county commissioners, who shall take an oath to faithfully demean themselves as such, and who, under the orders and directions of the county court in pursuance of the provisions of this act, shall superintend and contract for, in the name and behalf of the county, the clearing, grubbing and laying off such new location into suitable and convenient town lots, and the erection or purchase of all needful buildings on such new location, preparatory to the actual removal and change of the county seat.

SEC. 1163. As soon as such buildings shall have been made ready for the several courts holden at the county seat, the respective officers thereof and the archives thereof, the commissioners shall report the same to the county court at the next term; then in that case the next and every succeeding term thereof shall be held at the new county seat, and the circuit court and all other courts for said county of superior or general jurisdiction shall be held at the new county seat, and all processes issuing therefrom shall be made returnable thereto.

SEC. 1164. Whenever an election has been held in pursuance of this act, and the county seat changed in compliance therewith, it shall not be lawful to change the county seat again under ten years (b).

SEC. 1165. To ascertain the number of qualified voters of any county for the purposes of this act, and the lawful majority necessary to authorize the change or removal of any county seat as herein provided for, the county court shall be governed by the number of persons liable to pay a poll-tax as returned upon the assessor's books. *Act March 2, 1875.*

(b) Where an act providing for the removal of county seats is repealed, a provision of the act that there shall not be a second removal for ten years becomes inoperative. *Varner v. Simmons*, 33—212.

A provision of such act that whenever an election has been held "in pursuance of this act," and the county seat changed in compliance therewith, it shall not be lawful to change the same again under ten years, does not apply to a removal had under a prior act. *Ib.*

When at an election for the removal of a county seat the proposed removal is defeated, the time within which another petition for removal may be filed is not limited. *Cochran v. Edwards*, 38—136.

CHAPTER XXXVII.

COUNTY SURVEYORS (*).

SECTION

- 1166. Bond of.
- 1167. Not entering into bond, office to be vacant.
- 1168. To survey lands sold for taxes.
- 1169. Duties of generally as to orders of court.
- 1170. Any person may have lands surveyed.
- 1171. But persons interested must first be notified.
- 1172. To make survey of subdivision conformably to original survey.
- 1173. Corners, how perpetuated.
- 1174. Instruments, etc., to be provided by, and survey-book to be kept.
- 1175. Record of survey to be open to inspection.
- 1176. And to be delivered up to successor.

SECTION

- 1177. Penalty for retaining record.
- 1178. Certified copy from such record to be *prima facie* evidence.
- 1179. No act or record of to be conclusive.
- 1180. Deputies to be appointed and sworn.
- 1181. Chainmen, how appointed and sworn.
- 1182. What surveys to be legal evidence.
- 1183. When surveyor *pro tempore* to be appointed, and powers of.
- 1184. Calculations, how made.
- 1185. Record-book furnished by county.
- 1186. May copy field notes and maps.

SECTION 1166. The county surveyor shall, within fifteen days after he receives his commission, enter into bond, with good and sufficient security, in a sum not less than one thousand nor more than six thousand dollars, to the State of Arkansas, conditioned for the faithful performance of the duties of his office, according to law, to be approved by the circuit court as provided in section 4771.

SEC. 1167. If he shall neglect to enter into bond within the time prescribed, the office shall be deemed vacant, and it shall be the duty of the clerk of the county court immediately to inform the governor of the failure of such surveyor to give bond as required by law.

SEC. 1168. He shall survey all lands sold for taxes in his county, on the application of any person producing to him a certificate of purchase from the officer by whom such lands may have been sold.

SEC. 1169. He shall execute all orders to him directed, by any court of record, for surveying or resurveying any tract of land, the title of which is in dispute or in litigation before such court, and to obey all orders of survey for the partition of real estate; and, also, to accompany viewers and reviewers of roads, for the purpose of running and measuring any proposed road, whenever required by such viewers or reviewers.

SEC. 1170. Any person who may have entered any of the public lands of the United States, and having received from the proper officer a certificate of such entry, and, desiring his lands surveyed and laid off according to the certificate, may apply to the county surveyor for that purpose, who shall make such survey in accordance with the entry.

SEC. 1171. Before he shall proceed to survey any such tract of land, he shall be satisfied that all persons owning lands adjoining, and who may be, in any manner, affected by such survey, have been notified to attend and be present at the surveying thereof.

SEC. 1172. It shall be his duty, in subdividing any section or part of a section of land originally surveyed under the authority of the United States, to make his survey conformably to the original survey.

(*) For election and term of office of county surveyors, see art. VII, sec. 46, Const.

SEC. 1173. For the purpose of perpetuating every survey, he shall establish his corners by taking bearing trees, and noting particularly their course and distance from the corner; and when there are no trees within a reasonable distance, he shall perpetuate his corners by erecting mounds of turf, at least two and a half feet at the base, and two feet high, or, in lieu of mounds, stones may be planted in the ground, to a depth not less than twelve inches, which shall not be less than eighteen inches long, eight inches wide and three inches thick, and such stones shall be described in the field book.

SEC. 1174. He shall furnish himself with a compass of approved construction, having a nonious division; also, a two-pole chain of fifty links, and a well-bound book, in which he shall carefully and legibly record and note down every survey made by him, giving the name of the person the survey of whose lands is recorded, and describing, as near as practicable, the metes and bounds of the tract, and noting the date on which the survey was made.

SEC. 1175. Such record shall be subject to the inspection of every person who may deem himself interested therein.

SEC. 1176. It shall be the duty of the county surveyor, or other person having the official record of such surveyor in his possession, to deliver up such record to his successor whenever he may be applied to for that purpose.

SEC. 1177. If such surveyor, or the person having the possession of such record, shall refuse to deliver the same to such successor when demanded, he shall forfeit and pay the sum of one dollar per day for every day he may retain the same after demanded, to be recovered by action in the name of any person who may sue for the same, one-half to the use of the person suing and the other half to the use of the county.

SEC. 1178. A certified copy of the record of any county surveyor, under the hand of the surveyor, shall be admitted as *prima facie* evidence in any court of record.

SEC. 1179. No act or record by any surveyor, or his deputy, shall be conclusive, but may be reviewed by any competent tribunal in any case where the correctness thereof may be disputed.

SEC. 1180. Each county surveyor may appoint one or more deputies to assist in the performance of the duties of his office, and each deputy shall be sworn to perform the duties of his office according to the best of his skill and judgment, without favor or affection.

SEC. 1181. The necessary chainmen shall be employed by the person wanting surveying done, but they shall be good and disinterested persons, to be approved by the surveyor, and shall be sworn by the surveyor to measure justly and exactly, according to the best of their abilities.

SEC. 1182. No survey made by any person except the county surveyor or his deputy shall be considered as legal evidence in any court of law or equity, unless such surveys are made under authority of the United States, or by the mutual consent of the parties.

SEC. 1183. In all cases where the county surveyor may be interested in any survey which is required to be made by any court, such court shall direct such survey to be made by some competent person, and the person so appointed shall have power to administer the necessary oaths to the chainmen, and shall return such survey, under oath, and shall be entitled to the same fees for his services as the county surveyor would be entitled to receive for similar services.

SEC. 1184. All calculations to ascertain the contents of any tract of land by any county surveyor, or other person, shall be made by differences of latitude and departure.

SEC. 1185. The record book, required by this act to be kept by each county surveyor, shall be furnished at the expense of the county. *Rev. Stat., chap. 40.*

SEC. 1186. Each county surveyor shall have the liberty of copying any field notes and maps, for his own use, without paying for the same. *Act Jan. 7, 1857.*

CHAPTER XXXVIII.

COUNTY TREASURER (*).

SECTION

- 1187. Bond.
- 1188. Where filed and recorded.
- 1189. Refusal to enter into, works vacancy.
- 1190. Office, where to be kept.
- 1191. May appoint deputy.
- 1192. Appointment, how made and approved.
- 1193. Appointment and approval, where filed.
- 1194. Powers of deputy.
- 1195, 1196, 1197, 1198, 1199. Duties of treasurer.
- 1200. In case of vacancy, settlement to be made, etc.
- 1201. Forfeiture in certain event.

SECTION

- 1202. How recovered.
- 1203. To keep register of warrants paid.
- 1204. To file copy of on annual settlement.
- 1205. Warrants redeemed, presented at annual settlement; how and by whom canceled.
- 1206. Funds of county in state treasury; order of county court to draw.
- 1207. Warrant of auditor for funds, how obtained.
- 1208. Warrant to be paid by state treasurer.
- 1209. Duplicate receipt for such funds; county treasurer to charge himself with same.

SECTION 1187. Each county treasurer before he enters upon the discharge of the duties of his office shall enter into bond, with good and sufficient security, to the State of Arkansas in double the amount of all the county revenue that may come into his hands for any one year by virtue of his office, conditioned for the true and faithful performance of his duties as county treasurer, and that he will truly account for and pay over all money that may come into his hands as treasurer (†). *Act Feb. 21, 1877, sec. 1.*

SEC. 1188. Such bond shall be filed and recorded in the recorder's office of the county.

SEC. 1189. If he shall neglect or refuse to enter into bond within twenty days after the receipt of his commission (a), the office shall be considered vacant, and it shall be the duty of the clerk of the county court forthwith to inform the governor of such vacancy. *Rev. Stat., chap. 41, secs. 3, 4.*

SEC. 1190. The county treasurer shall keep his office at the county seat. *Act Feb. 21, 1877, sec. 3.*

SEC. 1191. He may appoint one deputy, for whose official conduct he shall be responsible.

SEC. 1192. Such appointment shall be in writing, signed by the treasurer and approved by the county court, or judge thereof in vacation.

(*) For election and term of office of the county treasurer, see art. VII, sec. 46, of the Constitution. By that section it is provided that he shall be *ex officio* treasurer of the common school fund of the county.

(†) As to approval of bond, see SEC. 4771.

(a) See *Talbot, ex parte*, 32—426.

SEC. 1193. Such approval shall be indorsed on said appointment and recorded in the recorder's office.

SEC. 1194. The deputy shall possess all the powers of his principal. *Act Feb. 28, 1883.*

SEC. 1195. The treasurer shall receive and receipt for all moneys payable into the county treasury, and pay and disburse the same on warrants drawn by order of the county court.

SEC. 1196. He shall keep a true and just account of all moneys received and disbursed, and a regular abstract of all warrants paid by him.

SEC. 1197. He shall make duplicate receipts in favor of the proper person for all moneys paid into the treasury, and keep the books, papers and money pertaining to his office at all times ready for the inspection of the county court.

SEC. 1198. He shall at each term of the county court, if required, furnish such court with an account of the receipts and expenditures of the county not before accounted for. *Rev. Stat., chap. 41, secs. 5-8.*

SEC. 1199. He shall annually on the first Monday of July, and oftener if so required, make a full and complete settlement with the county court of all funds and moneys that have come into his hands as such treasurer, and at such settlement it shall be the duty of the county court to make actual count of the money and other funds appearing by such settlement to be in his hands (b). *Act April 28, 1873, sec. 189.*

SEC. 1200. If he resign, be removed from office, or die, he or his executor or administrator shall immediately make such settlement and deliver to his successor in office all things pertaining thereto, together with all the moneys belonging to the county (*).

SEC. 1201. If he shall neglect or refuse to pay any warrant drawn on him by order of the county court of his county, having in his hands money applicable thereto, he shall forfeit and pay to the holder of such warrant fourfold the amount thereof (**).

SEC. 1202. Such forfeiture may be recovered by action in the name of the party aggrieved against such treasurer and his securities, and he shall be deemed guilty of a misdemeanor in office, and on conviction thereof shall be removed from office. *Rev. Stat., chap. 41, secs. 9-11.*

SEC. 1203. He shall keep a register of warrants similar to the one required to be kept by the clerk (c), to which the time when paid shall be added in a separate column. *Ib., sec. 31.*

SEC. 1204. He shall, when he makes his annual settlement with the county court, file a copy of his register of warrants paid. *Ib., sec. 32.*

SEC. 1205. He shall, at his annual settlement with the county court, produce all the warrants redeemed by him during the preceding year, and the presiding judge shall write the word "*Redeemed*" across the face of each warrant,

(b) For penalty for violation of this section, see SECS. 1747, 1785. It is only at a settlement that the treasurer may be required to produce the money which it is found should be in his hands for counting. *Vance & Wallace v. State, use, etc.*, 35—176. He or his administrator can pay over the county funds in his hands only to his successor in office. *Ib.*

(*) See the case cited in preceding note.

(**) See *Howell v. Hoggins*, 37—114.

(c) For register of clerk, see SEC. 1417.

and sign his name thereto, and cause all warrants thus redeemed to be filed in the office of the clerk of the county court (d). *Ib.*, sec. 34.

SEC. 1206. Whenever there is any money or funds of any kind, from whatever source derived, in the treasury of the state belonging to any county, the county court of such county shall make an order authorizing and directing the county treasurer to draw the same.

SEC. 1207. Upon the county treasurer presenting to the auditor of state a copy of said order, duly certified to by the clerk of the county court, under his official seal, the auditor shall draw his warrant upon the treasurer of state for whatever money or funds there may at the time be in the state treasury belonging to such county, and the county treasurer shall execute to the auditor a receipt for such warrant.

SEC. 1208. On the presentation of such warrant of the auditor, the state treasurer shall pay the same. *Act Feb. 22, 1883, sec. 1, as amended by act March 26, 1883.*

SEC. 1209. Upon the receipt of any such funds or money by the county treasurer of any such county, he shall receipt therefor in duplicate, one of which shall be retained by the state treasurer and the other shall be filed in the office of the clerk of such county, and such county treasurer shall thereupon charge himself with the funds or money so received. *Act Feb. 22, 1883, sec. 2.*

(d) It is also his duty, within ten days after each general election, to certify to the clerk of the circuit court a list of all persons indebted to the county. SEC. 2514.

Those sections of chap. 37, Gantt's Digest, which obviously relate exclusively to the redemption of interest-bearing scrip, are omitted as repugnant to or rendered obsolete by sec. 1, art. XVI, of the constitution. See *Worthen v. Roots*, 34—363-4; *Jacks & Co. v. Turner*, 36—89.

CHAPTER XXXIX.

COUNTY PRISONERS.

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HIRING OUT PRISONERS, ETC. (a).

SECTION 1210. Any person who may be convicted of any misdemeanor or petty offense in any of the courts of this state, and who shall be committed to jail in default of the payment of the fines and costs adjudged against him, shall be required to discharge such fines and costs by manual labor in any manual labor work-house, or any farm attached thereto, or any road, bridge or other public work in the county where the conviction and committal were had.

SEC. 1211. If any person so convicted be an artisan or mechanic and be put to labor in any manual labor work-house, or on any bridge or other public improvement, he shall be allowed a reasonable compensation for such labor; but such compensation shall not be paid to said artisan or mechanic.

(a) See *Cheany v. State*, 36—74.

SEC. 1212. Sections 1210 and 1211 shall not be so construed as to prohibit the employment of said county convicts on other than public works, but it shall be lawful to hire out such persons to any individual, company or corporation.

SEC. 1213. When any person shall be convicted of any misdemeanor under the laws of this state by any court of competent jurisdiction, the court shall render judgment against the person so convicted, which judgment shall direct that the person convicted be put to labor in any manual labor work-house, or on any bridge or other public improvement, or that the person be hired out to some person as hereinafter provided, until the fine and costs are paid, which shall not exceed one day for each seventy-five cents of the fine and costs (b).

SEC. 1214. It shall be the duty of the sheriff or constable, immediately after the conviction of any person of any misdemeanor, to proceed at once to hire said person out to some person, company or corporation, and to take from the person, company or corporation so hiring and contracting for such services a bond, payable to the State of Arkansas, for the use of the county, with sufficient sureties or surety, to be approved by the court rendering judgment, for the prompt and faithful payment of the money that shall become due and payable for the services rendered or labor done by such convict; and that he or they will treat such convict humanely while in his or their employment. *Provided*, that if any convict hired out under the provisions of this act shall escape from his employer, without any fault of such employer, before such convict shall discharge by his labor the fine and costs, the party hiring such convict shall not be liable on his bond for an amount greater than the time worked by such convict before his escape.

SEC. 1215. If any convict shall escape from such employer he shall be deemed guilty of an offense, and, if recaptured, he shall, upon conviction by any court of competent jurisdiction, be fined in any sum not less than double the amount of the fine assessed against him in the first case, together with all costs of search and recapture, and compelled to discharge the same by his labor, as provided for in the provisions of this act, and should any such convict, after a second conviction, comply faithfully with the terms of the contract, he shall be entitled to a deduction of twenty-five per cent. upon his labor on the second fine so imposed.

SEC. 1216. The bond taken and approved by the court shall be filed with the county clerk, and, upon a breach of said bond, it shall be the duty of the county judge to cause said bond to be sued upon, in any court having competent jurisdiction, and upon the recovery of a judgment against the principal and surety or sureties on said bond, and the collection of the amount of said judgment, the same shall be paid into the county treasury.

SEC. 1217. All moneys arising from hiring out or employing county convicts shall be paid over to the collector, and by him paid into the county treas-

(b) When judgment is rendered under this section, it is the duty of the sheriff, if the defendant is present at the trial, to retain him in custody, and, if the fine and costs be not immediately paid, to hire him out as directed by the judgment, and if he voluntarily permit him to go at large, he is guilty of a misdemeanor. *Griffin v. State*, 37—437. See SEC. 1226.

The convict may be hired for as much as can be got for him—not less than seventy-five cents a day; but the court can not require a greater hire per day than the *minimum* fixed by the statute, nor direct that the hiring be for a less number of days than one for every seventy-five cents of the fine and costs. *State v. Barnes*, 37—448.

ury for county purposes. But, in every instance, the county convict shall receive full credit for the amount of his labor, to be entered and counted in discharge of the fine and costs adjudged against him, and whenever his earnings shall be sufficient to pay in full the fine and costs adjudged against him he shall be discharged.

SEC. 1218. All fines collected under the provisions of this act shall be paid into the county treasury, and all costs so collected shall be paid to the respective officers to whom they may be due.

SEC. 1219. When convicts, employed on public works or improvements or in public work-houses, shall have paid the full amount of their fines and costs by their labor, then the county court shall issue a warrant in favor of each officer to whom costs may be due for the amount of his costs on the county treasurer, and the same shall be paid if there are sufficient funds in the treasury.

SEC. 1220. No county convict shall be allowed to work on any public work or improvement whatever where there may be danger of his escape, nor shall he be compelled to labor at any kind of business or in any avocation that would tend to impair his health or strength.

SEC. 1221. All persons hiring convicts under the provisions of this act shall, in addition to the bond required in section 1214, obligate themselves to furnish said convicts so hired with good and wholesome food, with comfortable clothing and medicine when sick, and not to require them to work at unreasonable hours, or for a longer time during any one day than other laborers, doing the same kind of labor, are accustomed to do.

SEC. 1222. Unless the convicts are immediately hired out, the management and control of said county convicts shall be confined to county courts, either in term time or in vacation by the judge, and the court or judge shall always have the right to require the aid of the sheriff and constables of their respective counties, and all lawful orders or process necessary to be issued and executed shall be executed by the said sheriff or constable.

SEC. 1223. The county court shall cause a record of all their proceedings under this law to be recorded in a well-bound book to be provided for that purpose. Said record shall contain:

First. A descriptive list of all persons known as "county convicts."

Second. How such convict has been or is employed.

Third. The name of the party or parties hiring such convict.

Fourth. The time when and the price at which such convict has been employed.

Fifth. The amount paid or allowed for such employed or hired convict.

Sixth. The amount due by such convict as fine and costs.

Seventh. Such other information as may be necessary and required under the rules adopted by said court.

SEC. 1224. The words "county convicts," as used in this act, shall be understood to mean persons convicted of misdemeanors or petty offenses, and committed to jail in default of the payment of the fine and costs adjudged against them. The use of the "plural" shall include also the "singular," and "*vice versa*," and the use of the "masculine" shall include also the "feminine," and "*vice versa*."

FEES OF COUNTY JUDGE AND OTHERS.

SEC. 1225. Until otherwise provided by law county judges shall receive as compensation for their services the following fees, to wit: For any contract of hire the sum of one dollar when made by the judge. For every bond required by this act, when prepared by the county judge, the sum of one dollar. For the examination and approval of each bond the sum of fifty cents. The sheriff or constable shall be allowed the same fees for any contract of hire as the judge, and the justice of the peace shall receive the same fees as the judge for the examination and approval of bonds. Said fees to be paid in every instance in advance by the party or parties hiring such convict, to be repaid to the contractor or employer when demanded out of the wages of such convict. *Act March 10, 1877.*

CONTRACT FOR KEEPING PRISONERS.

SEC. 1226. The county court is hereby authorized and empowered to make a contract with some responsible person or persons for the maintenance, safe keeping and working of persons committed to the county jail, and for the purpose of making such contract and for carrying out the provisions of this act said county court shall have full and plenary powers (c.) *Act March 22, 1881, sec. 1.*

SEC. 1227. Whenever, in the judgment of the county court, it shall be deemed advisable to enter into such contract, the county judge shall give notice by advertisement in some newspaper published in the county, and if no such paper is published in the county, then by posting written or printed notices at ten public places in the county, for thirty days, for proposals for such contract, and shall, on the day appointed, close the contract with the person who shall undertake the duties required by this act on the terms most advantageous to the county, and the contractor shall immediately enter into a good and sufficient bond to the satisfaction of the county judge and in such sum as the judge shall deem sufficient, payable to the State of Arkansas, for the use of such county, and conditioned that such contractor shall faithfully comply with the terms of said contract. *Provided*, however, that the county judge may reject any and all bids.

SEC. 1228. All persons convicted and committed to the county jail, as well as all persons committed to jail to await the action of the grand jury on a charge of felony, excepting for capital offenses, and those persons committed to jail for contempt of court, and also except all those sentenced to imprisonment in the state penitentiary, shall be delivered to said contractor to be by him kept and worked under said contract and under the provisions of this act.

SEC. 1229. The said contractor shall at the time of delivery to him of any prisoner under this act pay to the officer in charge of such prisoner all the costs due to the officers of the court in the prosecution of such convict.

SEC. 1230. Before the delivery to the contractor of any prisoner charged with a felony the officer in charge of such prisoner shall submit to the county judge all the papers by authority of which he holds such prisoner, and obtain from such judge an order in writing to deliver such prisoner to the contractor,

(c) See *Griffin v. State*, 37—441.

and the county judge may, for any cause that shall to him seem proper, decline and refuse to permit such prisoner to be delivered to the contractor, but the judge shall reduce his reasons to writing and file the same with the papers in the action pending against such prisoner.

SEC. 1231. Whenever any such prisoner charged with a felony shall be delivered to such contractor, and such prisoner shall on his final trial be convicted either of a felony or a misdemeanor, such prisoner shall be allowed credit on the judgment or sentence against him, at the rate provided for in section 1235, for all the time that such prisoner has been in the custody of the contractor. *Provided*, that should such prisoner be finally acquitted, he shall receive from the county all money, scrip or other revenue that the county may have received from the contractor on his account.

SEC. 1232. No person before conviction shall be forced to go to the contractor against his consent, *Ib.*, *secs. 2 and 3, as amended by act March 13, 1883.*

SEC. 1233. It shall be the duty of said contractor to safely keep said prisoners, and he shall provide them with sufficient wholesome food, and clothing, and medicine, and medical attention, and may work the said prisoners on a farm, or at any other lawful labor, under the same rules and regulations as convicts are worked by the lessees of the state penitentiary; and he shall be liable, in case of escape, as said lessees are, and he may adopt such safeguards to prevent escapes as said lessees are permitted to adopt (†), and such other means as he may deem best for that purpose.

SEC. 1234. He shall have those prisoners committed for trial present before the proper court, at the term of said court when they are required for trial; and the sheriff shall secure them and confine them in jail at such term so long as their presence may be required; and when no longer required, if not discharged by the court, they shall be redelivered to said contractor; and the sheriff, while having them in custody in attendance upon any court, shall receive from the county treasury the jail fees allowed by law on the allowance of his account, as now provided by law. *Ib.*, *sec. 4.*

SEC. 1235. Whenever any prisoner shall be convicted of a misdemeanor by any court or justice of the peace, if the fine and costs are not immediately paid or secured to be paid within thirty days to the satisfaction of the constable, sheriff or other officer, in case of conviction before the circuit court, said convict shall be committed to the county jail and by the jailer delivered to the contractor at such place as the contractor may designate, who shall keep and work such prisoners for the time he shall have been adjudged to be imprisoned, and for such further time as will discharge all fines and costs for which he may be committed, at the rate of fifty cents per day.

SEC. 1236. Said contractor shall not be released or excused from paying for the time of any convict unless such convict shall die without having labored, or unless such convict shall be or become from continued ill health unable to work. In such case, the county judge may order such convict to be discharged without payment of fine or costs.

SEC. 1237. Whenever any convict shall be sentenced to jail as a part of his punishment, he shall first work with the contractor to pay his fine and costs, and shall then commence to serve out his term by labor under the contractor as provided in section 1235. *Ib.*, *sec. 5, as amended by act March 13, 1883.*

(†) See chap. 118.

SEC. 1238. It shall be the duty of the sheriff to examine into the condition of said prisoners in custody of said contractor and see that they are treated with humanity, and furnished with sufficient clothing and sufficient sound, wholesome food and medical attention, and if he shall believe said contractor is in default in this respect he shall file written charges and specifications in the county clerk's office, and summons shall issue out of said clerk's office warning said contractor to appear at the next term of the county court, to be held not less than twenty days after the service of the summons, and show cause why said contract should not be canceled.

SEC. 1239. Upon service of such notice the county court shall proceed to investigate such charges, and may render a judgment canceling said contract, requiring said prisoners to be returned to the sheriff, or make such other order securing proper treatment in the future as the court may see proper.

SEC. 1240. Such contractor may appeal from said judgment as other cases are appealed from the county court.

SEC. 1241. In case of a cancellation of such contract, for any cause, the court may proceed to make another contract as provided in section 1226.

SEC. 1242. The county judge may, upon his own knowledge, or upon the information of others, cause summons to be issued and the like proceedings had thereon as provided in sections 1238 and 1239.

SEC. 1243. Said contractor may at any time deliver back to the sheriff one or more of said prisoners for safe keeping in the county jail, but in such case the contractor shall be responsible on his bond for the jail fees while the prisoners are in jail. *Provided*, his said right to deliver to the sheriff shall not exempt him from liabilities for the costs in cases of prisoners so delivered; nor shall the term of the imprisonment of such prisoner be lengthened by such delivery to the sheriff.

SEC. 1244. If the sureties on the bond of said contractor shall at any time be insufficient, he shall be required to furnish new security in the same manner as is now provided by law in case of county officers, and if he fails to furnish new and approved security when required, his contract shall be rescinded.

SEC. 1245. In case the county court is unable to make a contract with any person in the county as provided in section 1226, the court may contract for the work of its prisoners with the contractor of any other county according to the provisions of this act; and if the county court be unable to make any satisfactory contract with the contractor of any other county, then it shall be lawful for the county court to order and compel such prisoners to be worked on the public roads, bridges, levees or any other public improvements of the county, or to perform any other lawful labor for the benefit of the county, under such rules and regulations not inconsistent with the provisions of this act as the county court may prescribe.

SEC. 1246. In case the county court shall order the said prisoners to be worked on roads, bridges, levees or other county improvements as provided in the preceding section, it shall be the duty of the court to appoint some suitable person as superintendent, to take charge of, manage and control the labor of said prisoners, who shall, for the purpose of working them, be authorized to employ such guards or adopt such means to prevent escapes as may be necessary, and he shall have all the power of punishing, for refusal to work, herein given to contractors; and upon the order of the county judge the sheriff shall

deliver to said superintendent all such prisoners in his custody, and receive them back from him whenever he shall return them to the jail.

SEC. 1247. Said superintendent, with the permission of the county court or judge thereof, may temporarily contract in writing with any person or corporation for the labor of said prisoners, and all moneys received therefor shall be paid directly into the county treasury, and shall constitute a separate fund for the purpose of paying the expenses incident to the working of said prisoners, including the purchase of necessary working utensils. All such contracts, so made by said superintendent, shall be filed with the clerk of the county court.

SEC. 1248. Said superintendent shall take an oath to faithfully discharge his duties and receive such compensation for his services as the court may fix; and he may be at any time removed by the county court or judge, and another appointed by the judge in vacation, subject to approval at the next term of the court.

SEC. 1249. During the time the said prisoners shall be in charge of said superintendent, for working, the sheriff shall furnish them food the same as other prisoners confined in jail, for which he shall receive the regular fees.

SEC. 1250. If any prisoner shall escape from the contractor or superintendent, said contractor or superintendent shall have the right to arrest such prisoners, in person or through any sheriff or constable, anywhere in the state, and such prisoner, when arrested, shall be delivered to the contractor or sheriff of the county, and shall be compelled to work out all costs incurred in making his arrest, in the manner provided in this act. *Ib.*, secs. 8-14.

SEC. 1251. It shall be the duty of the justice of the peace or the clerk of the court rendering a judgment or sentence of conviction in misdemeanor cases when the defendant is committed to the county jail to file a copy of the judgment or sentence in the office of the clerk of the county court, together with a full itemized statement of the fine and costs adjudged, as well as a concise statement of the time such convict may be held to labor in discharge of the same. And the clerk of the county court shall register the same in a book to be by him kept for that purpose.

SEC. 1252. It shall be the duty of the contractor or superintendent to keep a record, in which shall be stated the name of the prisoner, his height, color, age, complexion, color of eyes and hair, time of commitment and the punishment adjudged by the court or justice, as well as the number of days such convict may be held to labor and a record of the days worked by such prisoner. And in no event shall a prisoner be charged for days lost on account of weather or by the fault of the contractor.

SEC. 1253. The contractor shall file in the office of the county clerk, on the first day of each month, a full statement of the time of each prisoner, charging him with the number of days requisite to discharge the judgment against him on the day of delivery of the prisoner to him, together with all lost time, as is hereinbefore permitted, and crediting such prisoner with all the days he has been held in custody from the date of his delivery to the contractor to the first day of each month.

SEC. 1254. If the contractor shall fail, neglect or refuse to file in said clerk's office his report, as in the preceding section required, on or before the tenth day of any month, then, in that event, it shall be taken and considered that each and every one of the convicts in custody of the contractor has lost

no time up to the tenth day of such month, and the clerk shall so credit each convict upon the book herein required to be by him kept, which said book shall be by him kept so as to show the time of each prisoner on the 10th day of each month, and said book shall be taken as evidence of that fact.

SEC. 1255. All said reports, books and papers in relation to said convicts shall be, by the clerk, presented to the county court, at each of its regular sessions, for its inspection and such action as the court may deem proper. *Ib.*, sec. 15, as amended by act March 13, 1883.

SEC. 1256. The provisions of this act shall apply to all prisoners now held by contractors from the date of its passage, but shall not relate back. *Act March 13, 1883, sec. 5.*

CHAPTER XL.

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TERMS OF, QUORUM, ETC.

SECTION 1257. The supreme court of the state shall be held on the fourth Mondays of May and November in each year. *Act May 23, 1874.*

SEC. 1258. The supreme court shall be composed of three judges, one of whom shall be styled chief justice, and elected as such; any two of whom shall constitute a quorum, and the concurrence of two judges shall, in every case, be necessary to a decision (a). *Art. VII, sec. 2, Const.*

SEC. 1259. If a quorum of said court be not present at the time and place fixed by law for holding said court, it shall stand adjourned until the first Monday next following, and if a quorum be not present on said day, said court shall stand adjourned by operation of law, from day to day, until a quorum shall appear, and then proceed to business, and so continue in session until all business ready for trial shall be adjudicated.

SEC. 1260. When a quorum has met, and the chief justice is absent, the senior judge shall act as presiding judge during the absence of the chief justice. *Act Dec. 5, 1868, secs. 3, 4.*

SEC. 1261. No judge of the supreme court who is interested in any suit, or related to either party within the fourth degree of consanguinity or affinity, or shall have been of counsel, or have presided in any inferior court, in any suit or action, shall sit on the determination thereof. *Rev. Stat., chap. 43, sec. 23, and art. VII, sec. 20, Const.*

SEC. 1262. Such court shall have power to direct the form of writs and process, not being contrary to or inconsistent with the constitution and laws of this state, and may, by general rules, provide what causes shall have a preference on the docket. *Ib., sec. 2, and Civil Code, sec. 17, as amended 1871.*

(a) When the population of the state shall amount to one million, the general assembly may, if deemed necessary, increase the number of judges of the supreme court to five; and, on such increase, a majority of judges shall be necessary to make a quorum or a decision. *Art. VII, sec. 3, Const.*

JURISDICTION.

SEC. 1263. The supreme court, except in cases otherwise provided by the constitution, shall have appellate jurisdiction only; which shall be co-extensive with the state, under such restrictions as may from time to time be prescribed by law (b). It shall have a general superintending control over all inferior courts of law and equity; and, in aid of its appellate and supervisory jurisdiction, it shall have power to issue writs of error, and *supersedeas*, *certiorari*, *habeas corpus*, *prohibition*, *mandamus*, and *quo warranto*, and other remedial writs; and to hear and determine the same (c). Its judges shall be conservators of the peace throughout the state, and shall severally have power to issue any of the aforesaid writs.

SEC. 1264. In the exercise of original jurisdiction, the supreme court shall have power to issue writs of *quo warranto* to the circuit judges and chancellors, when created, and to officers of political corporations when the question involved is the legal existence of such corporations (d). *Art. VII, secs. 4 and 5, Const.*

SEC. 1265. The supreme court shall have appellate jurisdiction over the final orders, judgments and determinations of all inferior courts of the state, in the following cases and no other (e):

First. In a judgment in an action commenced in the inferior courts, and, upon the appeal from such judgment, to review any intermediate order involving the merits and necessarily affecting the judgment (f).

Second. In an order affecting a substantial right made in such action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action; and when such order

(b) See note (ff) to sec. 4, art. VII, Const.

(c) See note (gg) to sec. 4, art. VII, Const. *Barter v. Brooks*, 29—173; *Payne v. McCabe*, 37—318; *Harbour, ex parte*, 39—126; *Batesville & Brankley Railroad Co., ex parte*, *Ib.*, pp. 87—88.

(d) See *State v. Leatherman*, 38—81; *Payne v. McCabe*, 37—321.

(e) It is only from a final judgment or decree that an appeal can be taken to the supreme court. *Hanger & Co. v. Krating, admr.*, 26—51; *Foley v. Whitaker, Ib.*, 95; *Citizens' Bank, etc., v. Walker, Ib.*, 468; *Ward v. Carlton, Ib.*, 662; *Lee v. Black*, 27—336; *Horner, admr., v. State, Ib.*, 113; *Benton County v. Rutherford*, 30—665; *Miller v. O'Bryan*, 36—200. An appeal will lie from an order allowing alimony, attorney's fees and costs, *pendente lite*. *Hecht v. Hecht*, 28—92; *Casteel v. Casteel*, 38—477.

(f) On a trial in the circuit court by a jury or the court, a motion for a new trial to correct the errors growing out of the evidence or instructions is essential before an appeal or writ of error can be entertained by the supreme court. Where the errors do not grow out of the evidence or instructions, but are apparent upon the face of the record, there is no necessity for such motion, but the appeal will not then lie if the error is one that can be corrected in the court below, until a motion for that purpose has been made and overruled in that court. *Serk v. Mahar*, 26—536; *Mills v. Jones & Reed*, 27—506; *Lambert v. Killian & Prewett, Ib.*, 549; *Union County v. Smith*, 34—684; *Merriweather v. Erwin*, 27—37; *Hanf v. Ford*, 37—544; *Badgett v. Jordan*, 32—151.

An appeal in chancery brings up every paper properly filed in the cause. They all under our present system become parts of the record. *Casteel v. Casteel*, 38—477.

The supreme court will review a chancery cause brought into it by appeal, whether the court below had jurisdiction or not. *Bailey v. Gibson*, 29—472.

In equity cases the supreme court will inquire into the correctness of the chancellor's finding of the facts. *Miller v. Gibbons*, 34—212.

As to practice in the supreme court see also the following cases: *Pike v. Douglass*, 28—59; *Reynolds v. McCallum, Ib.*, 453; *Hamlett v. Tallman*, 30—505; *Worthington v. Debardekin*, 33—651; *Mock v. Pleasants*, 34—63; *Washington v. Love, Ib.*, 93; *Johnson v. Terry*, 35—220; *Wycough v. Ford, Ib.*, 500; *St. Louis, I. M. & S. R. Co. v. Vincent*, 36—451; *Leggett v. Grinnett, Ib.*, 496; *Fry v. Chicot Co.*, 37—117; *L. R. & F. S. R'y Co. v. Perry, Ib.*, 164; *Pierce v. Edington*, 38—150; *St. Louis, I. M. & S. R'y Co. v. Murphy, Ib.*, 456; *Clark v. Hare*, 39—258; *Neal v. Pervey, Ib.*, 337; *Watts v. Cohn*, 40—114; *Carroll v. Bowler, Ib.*, 168; *Perry v. Cunningham, Ib.*, 185; *Berman v. Wolf, Ib.*, 251; *L. R. & Ft. S. R'y v. Miles, Ib.*, 298.

grants or refuses a new trial, or when such order strikes out an answer, or any part of an answer, or any pleading in an action; but no appeal to the supreme court from an order granting a new trial (g), in a case made or bill of exceptions, shall be effectual for any purpose, unless the notice of appeal contains an assent on the part of the appellant that, if the order be affirmed, judgment absolute shall be rendered against the appellant.

Third. In a final order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, and upon such appeal to review any intermediate order involving the merits and necessarily affecting the order appealed from. *Civil Code, sec. 15, as amended 1871.*

Fourth. Whenever the decision of any motion involves the constitutionality of any law of this state, or where the decision of any such motion has been or shall be placed, in the opinion of the judge making such decision, upon the unconstitutionality of such law, then an appeal shall lie, and may be made from such decision, or from the order entered upon such decision. *Civil Code, sec. 15, as amended 1871.*

APPEALS AND WRITS OF ERROR—HOW GRANTED (h).

SEC. 1266. The mode of bringing the judgment or final order of an inferior court to the supreme court for a reversal or modification shall be by appeal or writ of error.

SEC. 1267. The appeal shall be granted as a matter of right, either by the court rendering the judgment or order, on motion made during the term at which it is rendered, or by the clerk of the supreme court in term time or in vacation on application of either party (i).

SEC. 1268. Writs of error shall issue as of course in all cases out of the supreme court, in vacation as well as in term time (j). *Civil Code, sec. 859; Rev. Stat., chap. 117, sec. 1.*

SEC. 1269. The party taking the appeal or writ of error shall be called the appellant, and the adverse party the appellee.

SEC. 1270. Unless the appeal is granted by the inferior court, or the appellee enters his appearance in the supreme court, he shall be summoned actually or constructively, as provided by law for the service of a summons, to appear and answer the appeal or writ of error.

SEC. 1271. It shall be the duty of the appellant to file in the clerk's office of the supreme court, within ninety days after the appeal or writ of error is

(g) See SEC. 1315.

(h) For jurisdiction and practice on appeals in criminal cases, in felonies, see SECS. 2440-2460; in misdemeanors, SECS. 2461-2471.

(i) To give the supreme court jurisdiction on appeal, the record should disclose the fact either that a motion was made for an appeal during the term at which the judgment or final order was rendered or that a formal application was made to the clerk of the supreme court in term time or vacation for an appeal and the granting of the same by him. *Sykes v. Lafferty*, 26—414.

The control of the circuit court over its decree ends with the term at which it is rendered, and is not carried over to the next term by the continuance of a motion for rehearing; and an appeal at the next term upon overruling the motion is too late. *Joyner v. Hall*, 36—513.

It is in civil suits only, including suits at law, in chancery and penal actions, that the clerk of the supreme court is authorized to grant appeals. *Du Val v. Hot Springs*, 34—560.

(j) The legislature can not abolish the writ of error. Chapter 134 of Gould's Digest is not superseded by the Code, and so much of it as has not been repealed is still in force. The clerk of the supreme court is still authorized to issue writs of error in vacation as well as term time. *Harrison v. Tradee*, 27—59.

granted, an authenticated copy of the record, otherwise his appeal or writ of error shall be dismissed; but the supreme court may for cause shown extend the time for filing such copy.

SEC. 1272. The appellee may file an authenticated copy of the record in the clerk's office of the supreme court with the same effect as if filed by the appellant.

SEC. 1273. Where either party conceives that the copy of the record is imperfect, the clerk of the supreme court shall, on his application, issue a *certiorari*, commanding the clerk of the inferior court to transmit to the supreme court a true copy of the omitted or imperfect part of the record, which part shall in general terms be described in the writ.

SEC. 1274. Where a view of an original paper in the action may be important to a correct decision of the appeal or writ of error, the court may have the same brought up by a subpoena *duces tecum*, directed to the clerk of the inferior court.

SEC. 1275. The appellant may be required to give security for costs under the same circumstances that plaintiffs in civil action may be so required.

SEC. 1276. An appeal or writ of error shall not be granted, except within three years next after the rendition of the judgment or order (k), unless the party applying therefor was an infant, married woman, or of unsound mind, at the time of its rendition, in which cases an appeal or writ of error may be granted to such parties, or their legal representatives, within one year after the removal of their disabilities, or death, whichever may first happen.

SEC. 1277. The tax on the appeal or writ of error shall be two dollars and fifty cents, one dollar of which shall go to the clerk, and one dollar and fifty cents for the support of the supreme court library. *Civil Code, secs. 860-868.*

SEC. 1278. Appeals and writs of error may be brought by the prosecuting attorneys for the state, in the name and on behalf of the state, in like manner as by individuals, except when it may be otherwise provided by law (l).

HOW BROUGHT AND REVIVED IN THE CASE OF THE DEATH, ETC., OF ONE OR MORE
OF THE PARTIES, OR REFUSAL TO JOIN THEREIN.

SEC. 1279. If a judgment shall be rendered against several persons, and one of them die, a writ of error or appeal may be brought thereon by the survivors.

SEC. 1280. If there be several persons against whom any judgment may have been rendered, and who are entitled to bring a writ of error or appeal thereon, living at the time of bringing the same, they shall all join therein, except where it may be otherwise provided by law; and if any are omitted the appeal shall be dismissed, on motion of the appellee, upon due proof of the facts, unless one or more of such persons be allowed by the court to proceed.

SEC. 1281. To the allegation that there are other persons living who ought to join in such writ of error or appeal, if it be established or admitted, the party prosecuting such writ of error or appeal may answer, by due proof on affidavit, that any of such persons not joined are incapable of consenting to join therein by reason of insanity or imbecility of mind, or that their consent

(k) See *Joyner v. Hall*, 36—513.

(l) See SEC. 6394.

could not be had by reason of their absence from this state; and if the court shall be satisfied of the truth of such answer, such party shall be allowed to prosecute the same without joining such persons in the same manner as if they were joined.

SEC. 1282. To such allegation the appellant may also answer, by due proof on affidavit, that application has been made to the persons not named in the appeal to join therein and that they refused, and in such case the court shall stay further proceedings on the motion to dismiss the same until an order shall have been duly served on the person so refusing, as hereinafter provided.

SEC. 1283. The court shall thereupon cause an order to be entered on its record, directing the person so refusing to join to appear in such court within such time as shall be prescribed therein, and join in such writ of error or appeal and the proceedings thereon, or to be forever precluded from bringing another writ of error or appeal on the same judgment.

SEC. 1284. A copy of such order shall be served on the parties named therein, at least ten days previous to the time of appearance therein specified, in like manner as an original summons.

SEC. 1285. Upon the application of any person named in such order, he may be permitted to join in such appeal or writ of error and the proceedings thereon, upon the payment of the costs of the proceedings to bring him into court, including the motion to dismiss the appeal if it shall appear that he refused to join therein and without just cause; and the proceedings shall be amended by inserting the name of such person.

SEC. 1286. If any person named in such order do not appear by the time therein specified and join in such appeal or writ of error, on due proof of the service of such order, the default of such person shall be entered, and he shall thereby be forever precluded from bringing any appeal or writ of error on the same judgment, and the cause shall proceed in the same manner as if such person had been named in such appeal and the proceedings thereon.

SEC. 1287. When the name of any person out of this state, or incapable of giving consent to the bringing of an appeal or writ of error, shall be omitted in any such appeal, and the cause shall proceed without such name, the rights of such person shall not be impaired by the judgment thereon, but he may bring his appeal or writ of error in the same manner separately as if no such former appeal had been brought.

SEC. 1288. Any person who ought to join in any appeal or writ of error may be permitted to do so on his application, on such terms as the court shall impose, and the proceedings shall be amended by inserting his name, and the cause shall be proceeded in as in other cases. *Rev. Stat., chap. 117, secs. 4-14.*

SEC. 1289. If all the appellants die after the appeal taken or writ of error brought, and before judgment rendered thereon, the executor or administrator of the last surviving appellant, or the heirs or devisees of the appellant, in cases where they would be entitled to bring writs of error or prosecute an appeal, may be substituted for such appellant, and the cause shall proceed at their suit (m).

(m) If either party die after the cause is submitted and before final judgment, the judgment may be rendered in the names of the original parties, as of a day previous to such death; or if the death of either party be suggested and proven, a *nunc pro tunc* order may be made, to extend back to a day after submission and before such death. *Pool v. Loomis*, 5-110; *Trapnall v. Burton*, 24-371.

SEC. 1290. If all the appellees, or sole appellee, die after an appeal is entered or writ of error brought, and before judgment thereon, the executors or administrators of such appellees may be compelled to become parties and join therein in like manner as in an original suit.

SEC. 1291. If a female appellant marry after appeal taken or writ of error brought, her husband may be joined with her on his application, and his name shall be entered on the proceedings.

SEC. 1292. If a female appellee marry after the appeal taken or writ brought, and before judgment, her husband may be made a co-defendant on his application, or on the application of the adverse party. *Rev. Stat., chap. 117, secs. 29-32.*

SUPERSEDEAS.

SEC. 1293. The *supersedeas* is a written order, signed by the clerk, commanding the appellee and all others to stay proceedings on the judgment or order.

SEC. 1294. An appeal or writ of error shall not stay proceedings on the judgment or order, unless a *supersedeas* is issued (n).

SEC. 1295. A *supersedeas* shall not be issued until the appellant shall cause to be executed, before the clerk of the court which rendered the judgment or order, or the clerk of the supreme court, by one or more sufficient sureties, to be approved by such clerk, a bond to the effect that the appellant shall pay to the appellee all costs and damages that shall be adjudged against the appellant on the appeal; also, that he will satisfy and perform the judgment or order appealed from, in case it should be affirmed, and any judgment or order which the supreme court may render, or order to be rendered by the inferior court, not exceeding in amount or value the original judgment or order, and all rents or damages to property during the pendency of the appeal, of which the appellee is kept out of possession by reason of the appeal. *Provided*, that in all cases where *supersedeas* is obtained by or on behalf of a personal representative of a deceased person, upon any judgment against such decedent's estate, or against such representative in his fiduciary capacity, to be a charge upon or collected from such estate, the *supersedeas* bond shall only be to the effect that such personal representative shall not commit or suffer any waste or *devastavit* of such estate during the delay occasioned by the *supersedeas*.

SEC. 1296. Where the appeal is granted by the court rendering the judgment or order, and the bond is executed within thirty days thereafter, before the clerk of such court, the *supersedeas* shall be issued by such clerk; in all other cases it shall be issued by the clerk of the supreme court.

SEC. 1297. A *supersedeas* shall not be issued by the clerk of the supreme court until an authenticated copy of the record, with a certified copy of the *supersedeas* bond, if it was executed before the clerk of the inferior court, shall be filed in his office.

SEC. 1298. If the appellee believes the *supersedeas* bond to be defective, or the sureties to be insufficient, he may move the supreme court, if in session, or, on reasonable notice to the appellant, may move a judge of said court, in

(n) See SEC. 6394.

Where an appeal has been granted, with *supersedeas*, a writ of error will not lie until the appeal has been dismissed. *Rice v. Reed*, 29—320. The first appeal must be docketed in the supreme court and dismissed before a second appeal or writ of error can be taken. *Kinner & Butler v. Dodds*, 35—29. See *Turner v. Tapscott*, 29—318.

vacation, to discharge the *supersedeas*; and if the court or judge shall consider the sureties insufficient, or the bond substantially defective, in securing the rights of the appellee, the court or judge shall issue an order discharging the *supersedeas*, unless a good bond, with sufficient sureties, be forthwith executed. The order, if made by a judge, shall be in writing, and signed by him, upon the filing of which, or of a certified copy of the order when made in court, in the clerk's office of the inferior court, executions and other proceedings for enforcing the judgment or order may be immediately taken as if no *supersedeas* had been issued. But another *supersedeas* may be issued by the clerk of the supreme court upon the execution of a new and lawful bond, with sufficient sureties, as hereinbefore provided.

SEC. 1299. The *supersedeas* may be issued to stay proceedings on a part of a judgment or order, in which case the bond shall be varied so as to secure the party superseded.

TRIAL AND DECISION—PRACTICE.

SEC. 1300. Appeals and writs of error shall stand for trial when the copy of the record was filed in the clerk's office of the court twenty days before the commencement of the term; and where a summons is required, the appellee summoned twenty days before the day on which the appeal is set for trial on the docket, or the appearance entered before the day of trial (o).

SEC. 1301. The clerk shall arrange the appeals upon the docket, setting a proper number for each day of the term, and, in arranging them, may have due regard to the convenience of litigants, in placing together the appeals from the several judicial circuits.

SEC. 1302. The appellee, at any time before trial, by an entry upon the records of the supreme court, may pray and obtain a cross-appeal against the appellant, or any co-appellee, in whose favor any question is decided prejudicial to such party (p).

SEC. 1303. No written assignment of error shall be necessary, but the judgment may be reversed or modified for any error appearing in the record to the prejudice of appellant or cross-appellant.

SEC. 1304. Where the appeal or writ of error was improperly granted, or the appellant's right of further prosecuting the same has ceased, the appellee, in lieu of pleading, may move the court to dismiss the appeal or writ of error, the grounds of which motion shall be stated in writing, signed by the appellee or his counsel, and, if not appearing on the face of the record, or by a writing purporting to have been signed by the appellant and filed, shall be verified by affidavit. The motion shall not be heard or determined before the day on which the appeal or writ of error is set for trial on the docket, unless the appellant consents thereto.

SEC. 1305. The appellee may, by answer filed and verified by himself, or agent or attorney, plead any fact or facts which renders the granting of the appeal or writ of error improper, or destroys the appellant's right of further prosecuting the same; to which answer the appellant shall file a reply, likewise verified by affidavit of himself, agent or attorney, and the questions of law or fact thereon shall be determined by the court.

(o) See *Pierce v. Lyman*, 28—550.

(p) See *Joyner v. Hall*, 36—517.

SEC. 1306. Where an appeal or a writ of error, with a *supersedeas*, has been taken for delay merely, the appellee may at any time move the court to affirm the judgment or order as a delay case; before making which motion, he or his counsel shall indorse on the record in substance that he has carefully examined the record, and believes the appeal or writ of error is prosecuted for delay merely; whereupon the court shall examine the record, and if they find no error in the proceedings, and believe the appeal or writ of error was prosecuted for delay merely, they shall affirm the judgment or order. The appellee may, in open court, confess error at any time, whereupon the case shall be reversed and remanded to the court from which the appeal or writ of error was taken.

SEC. 1307. The supreme court may make rules for the convenient dispatch of business, the preservation of order, the argument of cases or motions, the manner and time of presenting motions or petitions for rehearing, the time of issuing its mandates and decisions and mode of enforcing its mandates and orders, and may change the same. *Provided*, that no mandate shall issue or decision become final until after fifteen juridical days from the time the decision was rendered, not including the days of recess, unless the court in delay cases, and in cases involving no difficult question of law or fact, otherwise direct. If the court shall take a recess, or adjourn, or the term shall expire within fifteen days after a decision is rendered, and a petition for a rehearing is filed in such case during said term, or shall, within fifteen days after said court has taken such recess, or adjourned, or the term expired, be presented to one of the judges of said court, and by him ordered to be filed by his written indorsement thereon, and is accordingly filed within said time, all proceedings upon the decision and mandate therein shall be suspended until the tenth day of the next succeeding term of said court, by which time said petition shall be acted upon unless the court shall otherwise order. *Provided*, that the court may, in term time, or a judge thereof in vacation, enlarge the time for filing petitions for rehearing, and order that all proceedings upon the decision be stayed during such time.

SEC. 1308. Upon the affirmance of a judgment, order or decree of a court for the payment of money or delivery of personal property, the appellee may file in the clerk's office of such court a copy of the mandate of affirmance, upon which the clerk shall indorse the time of its being filed, and thereupon such writs of execution may be issued on the judgment, order or decree as could be issued after the mandate had been entered in the court.

SEC. 1309. The supreme court shall have power to enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until they are obeyed.

SEC. 1310. A judgment or final order shall not be reversed for an error which can be corrected on motion in the inferior courts until such motion has been made there and overruled (q).

(q) Misjoinder of parties plaintiff can not be taken advantage of in the supreme court unless the objection was raised in the court below. *Long v. De Bevois*, 31—480.

Where excessive damages are assessed a motion to set aside should be made before appealing. *Johnson v. Barbour*, 28—188. So, also, where the form of the verdict or judgment is objectionable. *Ib.* But see *Hanf v. Ford*, 37—550.

When the defendant is actually served with process, and the writ or return is defective, he should appear and move to quash, or if judgment is taken by default, move to set it aside before appealing. *C. & F. Railroad Co. v. Trout*, 32—17. But this rule does not apply when the defendant has not been served with notice. *Ib.*; *Barnett v. State*, 35—501, and cases cited in opinion. See, also, *Nathan v. Sloan*, 34—524, and *Hanf v. Ford*, 37—549.

SEC. 1311. Upon the affirmance of a judgment, order or decree for the payment of money, the collection of which, in whole or in part, has been superseded, as provided in this chapter, ten per centum damages on the amount superseded shall be awarded against the appellant. *Civil Code, secs. 869-887.*

SEC. 1312. Upon the affirmance of any judgment, order or decree by the supreme court, which has been wholly or in part superseded, judgment shall be rendered and entered up against the securities on the *supersedeas* bond, and the court shall award execution thereon (r).

SEC. 1313. The supreme court may reverse, affirm or modify the judgment or order appealed from, in whole or in part, and as to any or all of the parties (s).

SEC. 1314. Upon the determination of any appeal or writ of error the supreme court may award execution to carry the same into effect, or may remand the record, with the decision of such court thereon, to the circuit court in which the cause originated, and order such decision to be carried into effect. *Civil Code, sec. 16, as amended 1871.*

SEC. 1315. Upon every appeal from an order granting a new trial on a case made or exceptions taken, if the supreme court shall determine that no error was committed in granting the new trial, they shall render judgment absolute upon the right of the appellant (t); and after the proceedings are remitted to the court from which the appeal was taken, an assessment of damages or other proceedings to render judgment effectual, may be then and there had in cases where such subsequent proceedings are requisite. *Civil Code, sec. 15, as amended 1871.*

SEC. 1316. When the facts in a special verdict are insufficiently found, the supreme court may remand the cause and order another trial to ascertain the facts. *Rev. Stat., chap. 117, sec. 37.*

SEC. 1317. If any judgment of the circuit court shall be reversed by the supreme court on writ of error or appeal, and such judgment may have been carried into effect before the reversal thereof, such defendant may recover from the plaintiff in such judgment the full amount paid thereon, including costs. *Ib., sec. 35.*

SEC. 1318. Every opinion of the supreme court shall be reduced to writing and be entered at full length on the record, and be filed among the papers in the cause to which it relates. The provisions of this section shall apply as well to motions that will dispose of a cause as to final decisions.

SEC. 1319. It shall always appear in the opinion of the court which of the judges delivered the same and who concurred or dissented. *Rev. Stat., chap. 127, secs. 3, 4.*

SEC. 1320. When any judge of the supreme court shall dissent from the opinion of the court in any case, such judge shall reduce his reasons for so dissenting to writing, and the same shall be recorded with the opinion of the court. *Rev. Stat., chap. 117, sec. 44.*

(r) The sureties in a *supersedeas* bond become, in legal effect, parties to the suit, and agree, in case of affirmance, that judgment may be rendered against them by the supreme court for costs and damages and the amount of the judgment below, and a judgment so rendered is not void for want of jurisdiction. *White v. Prigmore, 29-208.*

Upon the affirmance of a decree for money the decree goes against the sureties in the appeal bond as of course, and they are not entitled to notice before decree against them. *Rogers v. Brooks, 31-194.*

(s) See *Trieber v. Slover, 30-732; Brown v. State, 34-232.*

(t) See second subdivision of SEC. 1265.

SEC. 1321. It shall be the duty of the supreme court to adjudicate and decide all the points presented in error that legitimately arise in the case, notwithstanding that some one or more points less than the whole may be sufficient to determine the cause. *Act Dec. 21, 1846.*

SEC. 1322. The counsel who shall make briefs under the rules and regulations of the supreme court shall, after the statement of the cause, briefly state the points and the authorities relied on, and shall cause the same to be filed with the opinion of the court, and such brief shall form a part of the record in the cause. *Ib., sec. 2.*

SEC. 1323. The foregoing provisions shall extend to all appeals from decrees and decisions in chancery cases in all respects the same as from judgments and decisions in suits at law. *Civil Code, sec. 16, as amended 1871.*

II.—CLERK OF SUPREME COURT (*).

SECTION

1324. Bond of.

1325. Shall preserve seal and property, provide books, etc.

1326. Duty of.

1327. Shall issue process.

SECTION

1328. May appoint deputy.

1329. Responsible for conduct of.

1330. What papers to transmit to reporter.

1331. Penalty for failure.

SECTION 1324. The clerk of the supreme court shall, before he enters on the duties of his office, enter into bond to the state, in any sum not less than three thousand dollars, with good and sufficient security, to be approved by the court in term time, or by either of the judges thereof in vacation, conditioned for the faithful discharge of his office, and seasonably to record the judgments, decrees, orders and proceedings of such court, and do and perform all other things that may be required of him by law, and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, papers, records, seals and furniture belonging to his office, which bond shall be filed in the office of the secretary of state.

SEC. 1325. Such clerk shall preserve the seal and other property belonging to his office, and shall provide suitable books, stationery, furniture, and such other things as, in the opinion of the court, may be necessary for his office.

SEC. 1326. It shall be the duty of such clerk, with as little delay as possible, to record the judgments, decrees, rules, orders and proceedings of the court, together with the opinion of the court, and to make a complete alphabetical index to all his books of record.

SEC. 1327. He shall issue and attest all process, and affix the seal of his court thereto.

SEC. 1328. He may appoint one or more deputies, to be approved by the court; and every deputy so appointed may, in the name of his principal, do and perform all the duties required of his principal.

SEC. 1329. The principal shall be responsible for the conduct of his deputy. *Rev. Stat., chap. 26.*

(*) The supreme court shall appoint its clerk and reporter, who shall hold their offices for six years, subject to removal for good cause. *Art. VII, sec. 7, Const.*

SEC. 1330. He shall make out and transmit to the reporter a true copy of the points and citation by counsel filed in each cause decided, giving the names of the counsel signing the briefs, distinguishing the same from the opinion of the court, together with a true copy of the opinion of the court in the cause, and a copy of the opinion of the judge dissenting from the opinion of the court.

SEC. 1331. If he shall fail to make out, certify and transmit copies of all decisions made by the court at each term thereof, within the time prescribed by law, he shall be fined by the court in any sum not less than ten nor more than one hundred dollars. *Rev. Stat., chap. 127, secs. 5, 6 (u).*

III.—REPORTER OF SUPREME COURT (†).

SECTION

- 1332. Office of, where to be kept.
- 1333. He shall not practice law.
- 1334. He shall prepare statement of facts for reports.
- 1335. Copy of decisions, when to be delivered to; printing reports; contract for, etc.
- 1336. Reporter to superintend printing and binding.
- 1337. Contractor to deliver to secretary of state.

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- 1338. Auditor's warrant in favor of contractor, when to be drawn; out of what moneys paid.
- 1339. What opinions reporter may omit.
- 1340. He shall prefix to decisions notes of points decided.
- 1341. Reports, how to be printed.
- 1342. Reporter to make index, prefix title page, etc.
- 1343. Duty of printer.

SECTION 1332. The reporter of the supreme court shall keep his office at the rooms of the supreme court.

SEC. 1333. He shall not engage in the practice of the law, but devote his time to the duties of his office.

SEC. 1334. He shall prepare a statement of the facts in the causes, after the opinions are delivered, and shall print the same with the report of the causes decided by the court. *Act March 5, 1881, secs. 1 and 3.*

SEC. 1335. It shall be the duty of the clerk of the supreme court to furnish the reporter with a copy of all the decisions of the court, within thirty days after the expiration of the time allowed for filing motions for reconsideration, and it shall be the duty of the reporter to prepare the syllabus without delay, and as soon as he shall have been furnished with a sufficient number of cases to make a volume of six hundred pages, he shall at once notify the board of public contracts, and it shall be the duty of said board to let the contract for the printing and binding of the same in the manner now required by law for the letting of other contracts of a similar nature.

SEC. 1336. It shall be the duty of the reporter to superintend the printing and binding of said reports, and when he is satisfied that the same has been properly done, he shall deliver to the printer or binder, as the case may be, a certificate to that effect.

SEC. 1337. It shall be the duty of the contractor, as soon as said report shall have been printed and bound, to deliver the same to the secretary of state, whose duty it shall be to deliver to said contractor a receipt showing the number of volumes, in good condition, so delivered to him.

(u) See SEC. 1335.

(†) See note (*) on preceding page.

SEC. 1338. Upon the presentation of the certificate of the reporter, the receipt of the secretary of state, and the bill for printing and binding the same, approved by a majority of the board of public contracts, to the auditor of state, it shall be the auditor's duty to draw a warrant on the state treasurer in favor of said contractor for the sum mentioned in said approved bill or account, and upon the presentation of said warrant to the state treasurer it shall be his duty to pay the same out of any moneys in the state treasury appropriated for that purpose.

SEC. 1339. If the reporter shall consider that any opinion furnished him by the clerk is not of sufficient importance to justify the expense of publishing, he may submit the same to the chief justice of the supreme court, and, with his concurrence, may omit to publish such opinion. *Act March 20, 1883.*

SEC. 1340. The reporter shall prefix to each decision notes containing the points decided therein. *Rev. Stat., chap. 127, sec. 7, and act Jan. 14, 1857.*

SEC. 1341. The reports shall be printed on continuous paging until there shall be sufficient matter to form a volume of six hundred pages.

SEC. 1342. The reporter shall make out and have published with each volume a complete index thereto, and he shall cause to be prefixed a title page, together with an alphabetical list of all the cases reported therein. *Rev. Stat., chap. 127, secs. 9, 10.*

SEC. 1343. The printer shall furnish one good proof-reader, and two or three proof-sheets, if desired by the reporter.

IV.—LIBRARY.

SECTION

- 1344. Library and consultation room designated.
- 1345. Clerk to be librarian; compensation and duties.
- 1346. Bond of.
- 1347. Reports to be transferred from office of secretary of state.
- 1348. Statutes to be transferred, when.

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- 1349. Librarian may accept donations.
- 1350. Tax on enrollment of attorneys for support of.
- 1351. Annual tax on for support of.
- 1352. Books belong to state. Control and management of.
- 1353. Not to be removed from library or consultation room.

SECTION 1344. The upper room of the north part of the east wing of the state-house is set apart for a library and consultation room for the judges of the supreme court, and the lower story as a court room for the supreme court. *Act Jan. 9, 1851, sec. 1.*

SEC. 1345. The clerk of the supreme court, for the time being, shall be the librarian, whose compensation shall be such as said court shall from time to time prescribe, payable out of any money in his hands for the use of the library, and whose duty it shall be to take charge of and keep all books placed in his custody, and to take charge of and expend, under the direction of the supreme court, all moneys appropriated or collected for the increase of said library and paying the expenses thereof. *Ib.*

SEC. 1346. He shall, before entering upon the duties of his office, give bond to the state, with security to be approved by said supreme court, for the faithful discharge of his duties as librarian, in the penalty of five thousand dollars, which bond shall be filed with the secretary of state. *Ib.*

SEC. 1347. Reports of the decisions of the courts of other states and of the United States, deposited in the office of the secretary of state, shall be transferred to and constitute a part of the supreme court library. *Act Jan. 11, 1853, sec. 3.*

SEC. 1348. Whenever there shall be two or more copies of any statute of the United States, or of any state, in the state library, the secretary of state shall, upon demand, deliver one copy thereof to the clerk of the supreme court, to be deposited in the supreme court library.

SEC. 1349. The librarian shall have authority to accept any donation of books, money or property to increase said library, and he shall be responsible on his bond for the faithful disposition of any such donation.

SEC. 1350. Every person who shall be enrolled as an attorney in said supreme court shall pay a tax of ten dollars to the use of said library fund (v).

SEC. 1351. Every attorney, before he shall be permitted to have access to or the use of said library, shall pay annually to the said clerk the sum of ten dollars to the use of said library fund.

SEC. 1352. All books obtained and placed in said library shall be the absolute property of the state, subject to the control and management of said supreme court, except the reports of the supreme court of this state directed to be placed therein, which may be exchanged by said library for the reports of the other states of the Union, or of the United States courts, or other law books, under the direction of the supreme court, reserving for the use of said supreme court three copies of such reports.

SEC. 1353. It shall not be lawful for the judges of the supreme court, or any other person, to remove from said library and consultation room any of the books to be deposited therein, except for use in the supreme court room. *Act Jan. 9, 1851.*

(v) For tax on appeals and writs of error for same purpose, see SEC. 1277.

CHAPTER XLI.

COURTS—CIRCUIT (*).

SECTION

JUDICIAL CIRCUITS—COURTS WHEN AND WHERE HELD.

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1355. Time of holding courts.

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1356, 1357. Have jurisdiction in all cases in which exclusive jurisdiction is not given to other courts.

1358. Jurisdiction exclusive in equity cases.

1359, 1360, 1361. May change the names of persons, when and how.

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1368. *Certiorari*, writ of, may issue when.

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1374. Judges of may exchange circuits.

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PULASKI CIRCUIT COURT.

1380, 1381. Equity cases in, to be transferred to Pulaski Chancery Court.

JUDICIAL CIRCUITS (a).

SECTION 1354. Until otherwise provided by the general assembly, the judicial circuits shall be composed of the following counties:

First—Phillips, Lee, St. Francis, Prairie, Woodruff, White and Monroe.

Second—Mississippi, Crittenden, Cross, Poinsett, Craighead, Greene, Clay and Randolph.

Third—Jackson, Independence, Lawrence, Sharp, Fulton, Izard, Stone and Baxter.

Fourth—Marion, Boone, Searcy, Newton, Madison, Carroll, Benton and Washington. *Art. XVIII, Const.*

Fifth—Franklin, Johnson, Yell, Pope and Conway. *Act March 8, 1877.*

Sixth—Lonoke, Pulaski, Van Buren, Faulkner and Cleburne. *Art. XVIII, Const., and act Feb. 20, 1883.*

Seventh—Grant, Hot Spring, Garland, Perry and Saline.

Eighth—Montgomery, Polk, Howard, Sevier, Little River, Pike and Clark. *Art. XVIII, Const., and act March 8, 1877.*

Ninth—Hempstead, Lafayette, Nevada and Miller. *Art. XVIII, Const.; act Dec. 22, 1874, and act Feb. 27, 1883.*

Tenth—Chicot, Drew, Ashley, Bradley, Dorsey and Dallas.

Eleventh—Desha, Arkansas, Lincoln and Jefferson. *Art. XVIII, Const.*

Twelfth—Scott, Sebastian, Crawford and Logan. *Act March 8, 1877.*

Thirteenth—Columbia, Union, Calhoun and Ouachita. *Act Feb. 27, 1883.*

(*) For qualifications, election and term of office of circuit judges, see *art. VII, secs. 16 and 17, Const.*

(a) See *art. VII, sec. 13, Const.*

TIMES AND PLACES OF HOLDING COURTS.

SEC. 1355. Until otherwise provided by the general assembly, the circuit courts shall be begun and held in the several counties as follows:

First Circuit.

White—Third Monday of January and July, and continue for four weeks, or until the business of said court is disposed of. *Act Nov. 16, 1875.*

Woodruff—Third Monday in February and August.

Prairie—Second Monday after the third Monday in February and August.

Monroe—Sixth Monday after the third Monday in February and August.

St. Francis—Eighth Monday after the third Monday in February and August.

Lee—Tenth Monday after the third Monday in February and August. *Art. XVIII, Const.*

Phillips—Thirteenth Monday after the third Monday in February and August. *Act March 8, 1879.*

Second Circuit.

Mississippi—Second Monday in January and July. *Act March 6, 1883.*

Randolph—First Monday in February and August. *Act Dec. 14, 1875.*

Clay—For the western district, on the second Monday after the first Monday in February and August, and shall continue no longer than one week. For the eastern district, on the third Monday after the first Monday in February and August, and shall continue no longer than one week. *Act Feb. 23, 1881.*

Greene—Fourth Monday after the first Monday in February and August. *Act Dec. 14, 1875.*

Craighead—For the Jonesboro district, the sixth Monday after the first Monday of February and August. For the Lake City district, on the fifteenth Monday after the first Monday of February and August. *Acts Dec. 14, 1875, and March 6, 1883.*

Poinsett—Eighth Monday after the first Monday in February and August.

Cross—Ninth Monday after the first Monday in February and August.

Crittenden—Eleventh Monday after the first Monday in February and August. *Act December 14, 1875.*

Third Circuit.

Independence—Second Monday in January and July.

Stone—Fifth Monday after the second Monday in January and July.

Izard—Seventh Monday after the second Monday in January and July.

Baxter—Ninth Monday after the second Monday in January and July.

Fulton—Eleventh Monday after the second Monday in January and July.

Sharp—Thirteenth Monday after the second Monday in January and July.

Lawrence—Fifteenth Monday after the second Monday in January and July.

Jackson—Eighteenth Monday after the second Monday in January and July. *Act Feb. 28, 1883.*

Fourth Circuit.

Washington—First Monday in January and July. *Act Feb. 15, 1883.*
Newton—First Monday in February and August.
Searcy—Second Monday in February and August.
Marion—Third Monday in February and August.
Boone—First Monday after the third Monday in February and August.
Madison—Fifth Monday after the third Monday in February and August.
Benton—Sixth Monday after the third Monday in February and August.
Act March 5, 1881.

Carroll—For the western district, on the first Monday of May and November, and shall continue no longer than two weeks; for the eastern district, on the fifth Monday after the first Monday in February and August, and shall continue no longer than two weeks. *Act March 12, 1883.*

Fifth Circuit.

Yell—For the Danville district, at Danville, on the fourth Monday of January and August; for the Dardanelle district, on the second Monday of February and September.

Conway—First Monday of March and October.

Pope—First Monday of April and November.

Johnson—First Monday of May and December.

Franklin—First Monday of January and June.

Each of said courts shall embrace the time intervening between its day of commencement until the court of the next succeeding county or district commences. *Provided*, the term of Franklin County, commencing the first Monday of June, shall continue until its business is disposed of; not, however, to extend beyond the last day of July following. *Act Feb. 16, 1881.*

Sixth Circuit.

Faulkner—Fourth Monday in January and July.

Van Buren—Third Monday in February and August.

Cleburne—Fourth Monday in February and August.

Lonoke—First Monday in January and July.

Pulaski—Fourth Monday in March and September. *Act March 17, 1883.*

Seventh Circuit.

Hot Spring—First Monday of February and August.

Grant—Third Monday of February and August.

Saline—Fourth Monday of February and August.

Perry—Second Monday of September and March.

Garland—Fourth Monday of September and March. *Act Feb. 12, 1883.*

Eighth Circuit.

Clark—Fourth Monday in January and July.

Montgomery—Third Monday after the fourth Monday in January and July.

Polk—Fourth Monday after the fourth Monday in January and July.

Sevier—Fifth Monday after the fourth Monday in January and July.

Little River—Seventh Monday after the fourth Monday in January and July.

Howard—Ninth Monday after the fourth Monday in January and July.

Pike—Eleventh Monday after the fourth Monday in January and July.
Act March 11, 1879.

Ninth Circuit.

Lafayette—First Monday in February and August.

Nevada—First Monday in March and September.

Hempstead—First Monday in April and October.

Miller—First Monday in May and November. *Act March 10, 1883.*

Tenth Circuit.

Chicot—First Monday in January and July. *Act Feb. 28, 1883.*

Ashley—First Monday in February and August, and may, at the discretion of the court, continue two weeks. *Act Feb. 6, 1879.*

Drew—Third Monday in February and August. *Act Dec. 7, 1875.*

Dorsey—First Monday in March and September.

Dallas—Third Monday in March and September.

Bradley—Fourth Monday in March and September. *Act Feb. 20, 1883.*

Eleventh Circuit.

Arkansas—First Monday in February and August.

Lincoln—Fourth Monday in February and August.

Desha—For the Watson district, on the third Monday of March and September, and at the county seat on the first Monday of April and October. *Act Feb. 28, 1881.*

Jefferson—Sixth Monday after the fourth Monday in March and September. *Art. XVIII, Const.*

Twelfth Circuit.

Scott—Second Monday in February and August.

Logan—Second Monday after the last Monday in February and August.

Crawford—Sixth Monday after the last Monday in February and August.

Sebastian—Greenwood district, on the tenth Monday after the last Monday in February and August.

Sebastian—Fort Smith district, on the thirteenth Monday after the last Monday in February and August. *Act Jan. 27, 1883.*

Thirteenth Circuit.

Columbia—First Monday in March and September.

Union—Third Monday after the first Monday in March and September.

Calhoun—Sixth Monday after the first Monday of March and September.

Ouachita—Ninth Monday after the first Monday of March and September, and continue until the business of the court is finished. *Act Feb. 27, 1883.*

JURISDICTION—ORIGINAL (b).

SEC. 1356. The circuit court shall have jurisdiction in all civil and criminal cases, the exclusive jurisdiction of which may not be vested in some other court provided for by the constitution. *Art. VII, sec. 11, Const. (c).*

SEC. 1357. Circuit courts shall have original jurisdiction of all actions and proceedings for the enforcement of civil rights, or redress of civil wrongs, except when exclusive jurisdiction is given to other courts; and where such actions and proceedings are not expressly provided for by statute, the same may be had and conducted by the circuit courts and judges, in accordance with the course, rules and jurisdiction of the common law (d). *Civil Code, sec. 18, as amended 1873.*

SEC. 1358. They shall have exclusive original jurisdiction in each county in which they may be held, except in the County of Pulaski, as courts of equity, in all cases when adequate relief can not be had by the ordinary course of proceedings at law (e). *Act April 6, 1869, sec. 4.*

SEC. 1359. They shall have power, upon the application of any person within their respective jurisdictions, upon good reasons shown, to alter or change the name of such person.

SEC. 1360. When application is made to the courts under the preceding section it shall be by petition, in writing, embodying the reasons for such application; which petition, when allowed, shall, by order of the court, be spread upon the record, together with the decree of the court.

SEC. 1361. Any person whose name may be so changed by judgment or decree of any of said courts shall afterward be known and designated, sue and be sued, plead and be impleaded, by the name thus conferred. *Act April 8, 1869, secs. 8-10.*

SEC. 1362. They shall have power to authorize any person who is a resident of the county, and under twenty-one years of age, to transact business in general, and any particular business specified in like manner, and with the same effect as if such act or thing was done by a person above that age; and every act done by a person so authorized shall have the same force and effect in law and equity as if done by a person of full age. Letters testamentary, of administration or guardianship may be granted to any such person, if otherwise entitled, by law, to have or hold such fiduciary trust, with like effect as if granted to a person over twenty-one years of age. *Act Feb. 18, 1869.*

JURISDICTION—APPELLATE (f) AND SUPERVISORY.

SEC. 1363. The circuit courts shall exercise a superintending control (*) and appellate jurisdiction over county, probate, court of common pleas and corporation courts and justices of the peace; and shall have power to issue, hear and determine all the necessary writs to carry into effect their general and

(b) See note (11) to sec. 11, art. VII, Const.

(c) See secs. 15 and 40, art. VII, Const.

(d) For original jurisdiction in criminal cases, see SEC. 1366.

(e) See art. VII, secs. 15 and 44, Const.

(f) For appellate jurisdiction in criminal cases, see SEC. 2432.

(*) See note (jj) to sec. 14, art. VII, Const.

specific powers, any of which writs may be issued upon order of the judge of the appropriate court in vacation. *Art. VII, sec. 14, Const.*

SEC. 1364. They shall have appellate jurisdiction of the judgments and final orders of probate and county courts, and of the judgments and final orders of justices of the peace, in all civil actions. *Civil Code, sec. 19, as amended 1873.*

SEC. 1365. The appellate jurisdiction of the circuit court shall extend to errors of fact as well as errors of law in the orders and judgments.

SEC. 1366. Whenever the clerk of the county and probate court shall deliver to the clerk of the circuit court any original papers he shall take a receipt therefor, and file the same in place of such papers. *Civil Code, secs. 20, 22.*

SEC. 1367. In all cases of trials *de novo*, or of appeals, from inferior courts, the circuit courts shall have or retain jurisdiction of the subject matter for final judgment, in the same manner and to the same extent as though original jurisdiction had been conferred on said circuit courts by law (g), notwithstanding the amount in controversy may be less or greater than that found in the court below. *Act April 6, 1869, sec. 5.*

SEC. 1368. They shall have power to issue writs of *certiorari* to any officer or board of officers, or any inferior tribunal of their respective counties, to correct any erroneous or void proceeding, and to hear and determine the same. Application for such writ may be made to the court, or the judge thereof in vacation, on reasonable notice; and a temporary restraining order may be granted thereupon, on bond and good security being given in a sum double the amount in controversy, conditioned that the applicant will perform the judgment of the court (h). *Civil Code, sec. 18, as amended 1873.*

SEC. 1369. Affidavits may be read on such applications, and evidence *dehors* the record may be introduced by either party on the hearing. The record of any such inferior judicial tribunal shall be conclusive as far as the same may extend, but the acts of any executive officer or board of such shall only be *prima facie* evidence of their regularity and legality. The court shall have power in such cases to enforce its judgments by *mandamus*, prohibition, and other appropriate writs. *Ib.*

SEC. 1370. They shall have superintending control over the judgments, final orders and proceedings of county courts and county boards, or officers.

SEC. 1371. They shall have supervision and control over all local, county and municipal boards or officers in their actions or proceedings in the taxing or assessing, seizing or sale of property (i).

(g) See *Phillips County v. Lee County*, 34—240; *Dodson v. Mayor, etc.*, *Fl. Smith*, 33—508; *Grider v. Apperson*, 38—388; *Crow v. Reed*, 38—482.

(h) This section does not enlarge the writ of *certiorari* into an appeal or writ of error for the correction of mere errors in judicial proceedings. The practice is still to affirm or quash the judgment on the trial of the *certiorari*. *St. L., I. M. & S. Ry Co. v. Barnes*, 35—95.

The writ of *certiorari* can not be used by the circuit courts for the correction of errors of inferior courts as upon appeal; but where the inferior judgment shows upon its face that the court had no jurisdiction of the subject matter, or the person of the defendant, it may be quashed upon *certiorari*. *Baskins v. Wylde*, 39—347; *Haynes v. Semmes, Ib.*, 399; *Street v. Stuart*, 38—159; *State, use, etc., v. Hinkle*, 37—532.

On *certiorari* the record is conclusive as far as it extends. *Countz v. Markling*, 30—17. The writ of *certiorari* should not be issued in any case where there is or has been a right of appeal, unless the opportunity for appealing has been lost without fault of the petitioner. *Payne v. McCabe*, 37—318. See also *Vance v. Gaylor*, 25—82; *Wyatt & Hensley v. Burr, Ib.*, 476; *Smith v. Parker, Ib.*, 518; *Vance v. Little Rock*, 30—435; *Burk v. Coolidge*, 35—180; *Rose's Digest*, 136.

(i) See *Floyd v. Gilbreath*, 27—675.

SEC. 1372. The circuit courts and judges thereof shall have power to issue all proper writs, orders or process in the cases mentioned in the two preceding sections; and said circuit courts and the judges thereof shall have power to issue all writs, orders and process which may be necessary in the exercise of their jurisdiction, according to the principles and usages of law (j). *Civil Code, sec. 19, as amended 1873.*

LENGTH OF TERM—EXCHANGE OF CIRCUITS—PAYMENT OF EXPENSES—RULES (k).

SEC. 1373. Every circuit court shall continue in session, at each and every term thereof, until the business therein pending is disposed of, or until it becomes necessary for the judge thereof to adjourn the same in order to reach the court next to be holden in his circuit. *Act April 6, 1869, sec. 1.*

SEC. 1374. The judges of the circuit courts may, by agreement, temporarily exchange circuits or hold courts for each other for such length of time as may seem practicable and to the best interest of their respective circuits and courts. Such agreement shall be signed by the judges so agreeing, and entered on the record of the court or courts so to be held (l). *Act March 21, 1881.*

SEC. 1375. The judges exchanging as aforesaid shall have the same powers and authority, while holding court for each other, as the judge for the circuit in which such term or terms shall be held. *Civil Code, sec. 758, as amended 1871.*

SEC. 1376. Circuit judges shall have power to order the payment of all costs or expenses incident or necessary to a speedy and efficient administration of justice in their respective courts, and to enforce such payment; and they shall have full power to enforce the prompt payment of such expenses from any county in their respective circuits (m). *Civil Code, sec. 759, as amended 1871.*

SEC. 1377. Circuit courts shall have power to make and establish all proper rules which may be necessary for the dispatch of business. *Civil Code, sec. 18, as amended 1873.*

SEC. 1378. They shall have power to adopt such rules as may be found necessary for the conduct and determination of business in chancery, in conformity to the rules and practice governing such courts. *Act April 16, 1873.*

ELECTION OF SPECIAL JUDGE.

SEC. 1379. The election of special judges in all cases provided for in section twenty-one, article seven, of the constitution, shall be held by the clerk, and at such election the regular practicing attorneys in attendance on the court may vote, and the person receiving the largest number of votes shall preside as provided in said section (n). The proceeding shall be entered at large upon the record. *Civil Code, sec. 761, art. VII, sec. 21, Const.*

(j) See SEC. 1468.

(k) For further provisions prescribing the rights, powers and duties of circuit courts and their officers, see chap. 44.

(l) See art. VII, sec. 22, *Const.*

(m) See SECS. 1410, 1431. Under section 1410 any expense of a court exceeding the appropriation required by section 1431 must be presented to the county court, and, if it acts upon the claim and refuses to allow it, an appeal to the circuit will lie as in other cases. Circuit courts have no original jurisdiction to audit claims against the county and direct their payment out of the county treasury; and see SEC. 1488.

(n) See art. VII, sec. 21, *Const.*, and note (kk) *there'o.*

PULASKI CIRCUIT COURT.

SEC. 1380. When an action commenced in the Pulaski Circuit Court by proceedings at law is changed into equitable proceedings, the court shall order it to be transferred to the Pulaski Chancery Court; whereupon the papers in the action, with a copy of the orders in the case, shall be delivered by the clerk to the clerk of the chancery court, who shall place the case upon the docket of that court, and the action shall proceed as if originally brought therein.

SEC. 1381. Where any issue arising in an action is to be tried in equity, without a change of the whole action into equity, the trial of such issue shall be by the Pulaski Circuit Court; and where all of the issues were such as heretofore were cognizable in chancery, and the defendant elects to have them all tried in equity, the court shall order the action to be transferred to the Pulaski Chancery Court, whereupon the same proceedings shall be had as are directed in the last section. *Civil Code, secs. 799, 800.*

CHAPTER XLII.

COURTS OF PROBATE.

SECTION

1382. Regular terms of, when held in the several counties.

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1385, 1386. Appeals to circuit court, when and how taken.

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1388. Judgment superseded on filing bond.

1389. Duty of clerk on appeals; cause to be tried *de novo*.

1390. Appeals, when to be determined.

1391. Notice of, when and how to be given.

1392. On failure to give notice, cause may be continued.

1393. Appellee may have trial without notice.

TERMS OF, WHEN HELD.

SECTION 1382. The probate court of each county in this state shall commence and be held at the time hereinafter mentioned, and may continue from day to day until the business before the court shall be disposed of; and all process issued shall be returned on said day :

Arkansas County, on the third Monday in January, April, July and October.

Ashley County, on the third Monday in January, April, July and October.

Baxter County, on the second Monday in March, June, September and December.

Benton County, on the third Monday in January, April, July and October.

Boone County, on the second Monday in January, April, July and October.

Bradley County, on the second Monday in January, April, July and October.

Act Jan. 7, 1875.

Calhoun County, on the fourth Monday in February, May, August and November. *Act March 30, 1883.*

Carroll County, for the eastern district, on the third Monday in January, April, July and October; for the western district, on the fourth Monday in January, April, July and October. *Act Jan. 7, 1875, and act March 30, 1883.*

Chicot County, on the second Monday in January, April, July and October.

Clark County, on the third Monday in January, April, July and October. *Act Jan. 7, 1875.*

Clay County, for the eastern district, on the third Monday in January, April, July and October; for the western district, on the fourth Monday in January, April, July and October. *Act Feb. 21, 1877, and act Feb. 23, 1881.*

Cleburne County, on the third Monday in January, April, July and October. *Act Feb. 20, 1883.*

Columbia County, on the second Monday in February, May, August and November. *Act Jan. 7, 1875.*

Conway County, on the second Monday in January, April, July and October. *Act Dec. 14, 1875.*

Craighead County, for the Jonesboro district, on the second Monday in January, April, July and October; for the Lake City district, on the fourth Monday in January, April, July and October. *Act Jan. 7, 1875, and act March 6, 1883.*

Crawford County, on the third Monday in February, May, August and November. *Act March 30, 1883.*

Crittenden County, on the second Monday in January, April, July and October.

Cross County, on the second Monday in January, April, July and October.

Dallas County, on the third Monday in January, April, July and October. *Act Jan. 7, 1875.*

Desha County, at the county seat, on the second Monday in August, November, February and May; in the Watson district, on the third Monday in August, November, February and May. *Act March 30, 1883.*

Dorsey County, on the fourth Monday in February, May, August and November. *Act Feb. 28, 1883.*

Drew County, on the fourth Monday in January, April, July and October.

Franklin County, on the first Monday in February, May, August and November.

Faulkner County, on the third Monday in January, April, July and October.

Fulton County, on the first Monday in March, June, September and December.

Garland County, on the second Monday in January, April, July and October.

Grant County, on the third Monday in January, April, July and October.

Greene County, on the third Monday in January, April, July and October.

Hempstead County, on the second Monday in January, April, July and October.

Hot Spring County, on the second Monday in January, April, July and October.

Howard County, on the third Monday in January, April, July and October.

Independence County, on the first Monday in February, May, August and November.

Izard County, on the third Monday in March, June, September and December. *Act Jan. 7, 1875.*

Jackson County, on the second Monday in January, April, July and October. *Act Nov. 30, 1875.*

Jefferson County, on the second Monday in January, April, July and October.

Johnson County, on the second Monday in January, April, July and October. *Act Jan. 7, 1875.*

Lafayette County, on the fourth Monday in January, April, July and October. *Act April 3, 1883.*

Lawrence County, on the first Monday in February, May, August and November. *Act March 9, 1877.*

Lee County, on the third Monday in February, May, August and November.

Lincoln County, on the fourth Monday in January, April, July and October. *Act Jan. 7, 1875.*

Little River County, on the third Monday in January, April, July and October. *Act Feb. 2, 1877.*

Logan County, on the third Monday in January, April, July and October.

Lonoke County, on the fourth Monday in January, April, July and October.

Madison County, on the second Monday in January, April, July and October.

Marion County, on the first Monday in February, May, August and November. *Act Jan. 7, 1875.*

Miller County, on the second Monday in March, June, September and December. *Act Dec. 22, 1874.*

Mississippi County, on the second Monday in January, April, July and October.

Monroe County, on the second Monday in January, April, July and October.

Montgomery County, on the Thursday after the first Monday in January, April, July and October.

Nevada County, on the fourth Monday in January, April, July and October.

Newton County, on the fourth Monday in January, April, July and October.

Ouachita County, on the third Monday in January, April, July and October.

Perry County, on the second Monday in February, May, August and November.

Phillips County, on the third Monday in February, May, August and November. *Act Jan. 7, 1875.*

Pike County, on the second Monday in January, April, July and October. *Act Feb. 4, 1879.*

Poinsett County, on the third Monday in January, April, July and October. *Act Feb. 21, 1877.*

Polk County, on the second Monday in January, April, July and October. *Act Feb. 24, 1881.*

Pope County, on the first Monday in May and the third Monday in January, July and October. *Act March 5, 1881.*

Prairie County, on the third Monday in January, April, July and October.

Pulaski County, on the second Monday in January, April, July and October.

Randolph County, on the second Monday in January, April, July and October.

Saline County, on the fourth Monday in January, April, July and October.

St. Francis County, on the third Monday in January, April, July and October.

Scott County, on the second Monday in January, April, July and October.

Searcy County, on the second Monday in January, April, July and October.

Sebastian County, at Greenwood, on the third Monday in January, April, July and October; at Fort Smith, on the fourth Monday in January, April, July and October.

Sevier County, on the second Monday in January, April, July and October.

Sharp County, on the first Monday in February, May, August and November.

Stone County, on the third Monday in January, April, July and October.

Union County, on the second Monday in January, April, July and October.

Van Buren County, on the third Monday in January, April, July and October.

Washington County, on the first Monday in March, June, September and December.

White County, on the second Monday in January, April, July and October.

Woodruff County, on the fourth Monday in January, April, July and October. *Act Jan. 7, 1875.*

Yell County, for the Danville district, on the second Monday in January, April, July and October; for the Dardanelle district, on the third Monday in January, April, July and October. *Act Jan. 7, 1875, and Dec. 15, 1875.*

JUDGE OF PROBATE COURT.

SEC. 1383. The judge of the county court shall be the judge of the court of probate (†). *Art. VII, sec. 34, Const.*

JURISDICTION.

SEC. 1384. The court of probate shall have original jurisdiction in the following cases (a):

First. In all matters relating to the probate of last wills and testaments, the estate of deceased persons, executors, administrators, guardians and persons of unsound mind and their estates.

Second. In the settlement and allowance of accounts of executors, administrators and guardians.

Third. To hear and determine all controversies respecting last wills and testaments, the rights of executorship, administration or guardianship.

Fourth. To issue process and cause to come before such court all persons whom they may deem it necessary to examine, whether parties or witnesses, or who as executors, administrators, or guardians, or otherwise, shall be interested or in anywise accountable for any lands, tenements, goods, chattels, moneys or effects belonging to any minor, orphan, or person of unsound mind, or to the estate of any deceased person. *Act Jan. 7, 1875.*

(†) See chap. 43, note (a).

(a) See art. VII, sec. 34, Const., note (pp); *Jones v. Graham*, 36—383.

APPEALS.

SEC. 1385. Appeals may be taken from judgments and orders of the probate court to the circuit court, under such regulations and restrictions as may be prescribed by law. *Art. VII, sec. 35, Const.*

SEC. 1386. Appeals may be taken to the circuit court from all final orders and judgments of the probate court at any time within twelve months after the rendition thereof by the party aggrieved filing an affidavit and prayer for appeal with the clerk of the probate court, and upon the filing of such affidavit, the court shall order an appeal at the term at which such judgment or order shall be rendered, or at any term held within twelve months thereafter. The party aggrieved, his agent or attorney, shall swear in said affidavit that the appeal is taken because he verily believes that he is aggrieved, and is not taken for the purpose of vexation or delay.

SEC. 1387. Administrators, executors and guardians shall not be required to give bond, but all orders against them as such shall be superseded by the appeal. In all other cases where the appellant desires a supersedeas, he shall give bond in a sufficient sum, to be settled by the court, conditioned that he shall pay all the costs of the appeal and such damage as may be adjudged against him in the appeal, and will perform the judgment of the circuit court, or abide and perform the judgment of the probate court, if the same is affirmed or the appeal is dismissed, and judgment may be rendered on said bond in the circuit court.

SEC. 1388. Upon filing of the bond as required in the preceding section, the judgment shall be superseded. *Provided*, that an appeal may be taken without supersedeas.

SEC. 1389. On all appeals to the circuit court from all said orders and judgments of the probate court, the clerk of said court shall transmit all of the original papers and a transcript of the record entries in the cause or matter to the clerk of the circuit court, whereupon the circuit court shall proceed to try the cause *de novo* (b).

SEC. 1390. All appeals allowed ten days before the first day of the term of the circuit court next after the appeal allowed, shall be determined at such term unless continued for cause.

SEC. 1391. If the appeal be not allowed at the same term at which the judgment is rendered, the appellant shall serve the appellee at least ten days before the first day of the term at which the cause is to be determined with a notice in writing, notifying him of the fact that an appeal has been taken from the judgment therein specified. The notice may be served in the same manner as an original summons, and when the appellee does not reside in the county and has no agent in the suit therein, the service may be by leaving a copy of such notice with the clerk.

(b) The statement in an appeal transcript that an affidavit was filed will not be countervailed by the fact that such affidavit was not filed with the other papers in the case in the circuit court. *Grider v. Apperson*, 38—398.

Upon appeal from the probate court the circuit court tries the case *de novo*, and makes such orders as the probate court should have made. *Ib.*

Upon the trial of exceptions to a guardian's annual account, the circuit court can only settle the balance, and then remand the cause to the probate court for further proceedings, on the basis of the balance so ascertained. *Crow, guardian, etc., v. Reed*, 38—482.

SEC. 1392. If the appellant fail to give notice of the appeal in a cause where such notice is required, the cause may, on the application of the appellee, be continued as a matter of course until the succeeding term, but no appeal shall be dismissed for want of such notice, and if the cause be continued no further notice shall be required.

SEC. 1393. Nothing in the preceding section shall be so construed as to prevent the appellee from going into a trial of such an appeal without notice. *Act March 24, 1875.*

CHAPTER XLIII.

COURTS—COUNTY (a).

SECTION	TERMS, ETC.	SECTION	
1394, 1395, 1396, 1397, 1398.	Regular terms of, when held in the several counties.	1422.	Redeemed warrants, etc., register of, clerk to keep.
1399, 1400.	County court to be postponed when circuit court occurs on same day.	1423.	Old warrants redeemed, court may burn, when.
1401.	When special term may be held.	COUNTY CLERK, DUTIES OF.	
1402.	Notice of special term, how given.	1424.	Clerk to keep account between treasurer and county.
1403.	Sessions all public, and within what hours.	1425.	between county and all persons.
1404.	Sheriff to attend each term and execute orders, etc.	1426.	to file all vouchers, papers, etc., of settlements; copies evidence.
1405.	Circuit court clerk <i>ex officio</i> clerk of county court.	1427.	to issue warrants when ordered by court. Register of, etc.
1406.	Seal of county court.	1428.	to balance and exhibit accounts, etc., for inspection.
JURISDICTION.		1429.	to tabulate total receipts and expenditures of county and post up same.
1407.	Powers and jurisdiction of county court.	EXHIBITS OF RECEIPTS AND ALLOWANCES.	
1408.	May fine and imprison for contempt.	1430.	Court to publish statement of allowances, receipts and expenditures, when and how.
1409.	Judge may approve bonds in vacation, subject to approval or rejection by the court.	CONTINGENT EXPENSES OF CIRCUIT COURTS.	
ALLOWANCES, HOW MADE—WARRANTS—REGISTER THEREOF, ETC.		1431.	Appropriation for, court to make.
1410.	No moneys paid out of county treasury except on order of the court.	1432.	Expenses to be certified by clerk and countersigned by judge. Warrant to issue.
1411.	Claim not to be allowed for more than amount actually due.	COUNTY JUDGE NOT TO BE INTERESTED IN COUNTY CONTRACTS.	
1412.	to be sworn to; affidavit, what to state, to be filed and kept, etc.	1433.	Unlawful for county judge to be interested in contracts of county.
1413.	to be itemized; court may require proof, etc.	PLACE OF HOLDING, HOW CHANGED.	
1414.	Fees, constructive, and not specifically allowed to officer, court prohibited from auditing.	1434, 1435.	Court may change place of sittings; duty of clerk in such case.
1415.	Claim allowed, record entry. Warrant for, form of.	APPEALS.	
1416, 1417.	Warrants, how signed and numbered. Register, form of.	1436.	To circuit court, to be granted as a matter of right, within what time.
1418.	Warrants, receipts for; clerk to lay before court, when.	1437.	In what cases appellant to give bond; condition of bond.
1419.	Lost warrants, reissue for, when.	1438.	Original papers and transcript of record to be filed with clerk of circuit court.
1420.	Payment of warrants. Receivable for taxes, etc.		
1421.	Fraudulent warrants, how disposed of by court. Penalty on clerk.		

(a) See *Schedule Const.*, sec. 23. The judge of the county court shall be elected by the qualified electors of the county for the term of two years. He shall be at least twenty-five years of age, a citizen of the United States, a man of upright character, of good business education and a resident of the state for two years before his election, and a resident of the county at the time of his election and during his continuance in office. *Art. VII, sec. 29, Const.*

SECTION

- 1439. When appeals stand for trial.
- 1440. When appellee to be summoned.
- 1441. Appeals to be tried *de novo*.
- 1442. County judge to defend appeals.

COURT FOR LEVYING TAXES, ETC.

- 1443. How constituted and when to meet.
- 1444. Majority of justices failing to attend, sheriff to summon absentees.
- 1445. Presiding officer; concurrence of majority necessary to a decision.
- 1446. Duty of sheriff.
- 1447. Duty of clerk.
- 1448. Proceedings on opening court; order of business.
- 1449. Amount of appropriation for each purpose to be specified; aggregate not to exceed what.

SECTION

- 1450. Clerk to keep an account book of appropriations and allowances against each.
- 1451. No contract in behalf of county without previous appropriation therefor.
- 1452. Taxes, how extended on tax books; warrants of clerk to specify fund upon which drawn.
- 1453. County taxes, how payable.
- 1454. Order of allowance to specify appropriations from which payable.
- 1455. In absence of quorum, court may adjourn from day to day.
- 1456. Powers of Sebastian County Court not enlarged.
- 1457. Compensation of justices who sit in levying court.

REGULAR TERMS OF—WHEN HELD.

SECTION 1394. The regular terms of the county courts in the several counties in this state, except in the Counties of Desha, Franklin and Pope, shall commence on the first Monday in January, April, July and October of each year, and shall continue as long as the business shall require.

SEC. 1395. The county court of Sebastian County shall be held at Greenwood on the first Monday in January, April, July and October, and at Fort Smith on the second Monday in January, April, July and October in each year. *Acts Feb. 5, 1875; Feb. 20, 1883; March 8, 1883, and April 3, 1883.*

SEC. 1396. The county court of Desha County shall be held on the fourth Monday of July, October, January and April. *Act March 30, 1883.*

SEC. 1397. The county court of Franklin County shall be held on the third Monday in January, April, July and October. *Act Feb. 5, 1875.*

SEC. 1398. The county court of Pope County shall be held on the fourth Monday in March and the first Monday in January, July and October. *Act March 5, 1881.*

SEC. 1399. Whenever it shall happen that the time for holding the county court and circuit court in any county shall be on the same day, the county judge shall not commence his court until two weeks thereafter.

SEC. 1400. All process of whatever description shall be returnable and have day and trial in the same manner as if said county court had been held at the regular time prescribed by law. *Act Feb. 5, 1875.*

SPECIAL TERMS.

SEC. 1401. The county judge of any county may hold a special term of the county court when the public good of the county demands the same.

SEC. 1402. Before any special term of a county court shall be held, the county judge shall give a notice ten days before the same is held, by posting up ten written or printed notices in ten of the most public places in the county, including one on the door of the clerk's office of the county. *Act March 12, 1879.*

SESSIONS—HOW HELD.

SEC. 1403. Every regular or special term of the county court shall be held with open doors, and between the hours of nine o'clock A. M. and six o'clock P. M. *Act April 3, 1873.*

DUTY OF SHERIFF.

SEC. 1404. It shall be the duty of the sheriff to attend each regular or special term of the county court for his county, either in person or by deputy, and to execute all orders and precepts made by said court. *Ib.*

CLERK.

SEC. 1405. The clerk of the circuit court shall be *ex officio* clerk of the county court (*). He shall attend each regular or special term of said court, either in person or by deputy, and keep and preserve in his office a complete and correct record of its proceedings. *Art. VII, sec. 19, Const., and act April 3, 1873, sec. 5.*

SEAL.

SEC. 1406. Each county court may procure a seal, to be styled the seal of ——— County. *Act April 3, 1873, sec. 10.*

JURISDICTION AND POWERS.

SEC. 1407. The county court of each county shall have the following powers and jurisdiction: Exclusive original jurisdiction in all matters relating to county taxes, in all matters relating to roads, the appointment of viewers, receivers and overseers of roads; to order the erection of bridges, and directing the repairing of the same; to superintend all ferries, paupers, bastardy cases, vagrants and the apprenticeship of minors; to fix the places of holding elections; to designate apportioning justices; to audit, settle and direct the payment of all demands against the county; to have the control and management of all the property, real and personal, for the use of the county; to have full power and authority to purchase or receive by donation any property, real or personal, for the use of the county, and to cause to be erected all buildings and all repairs necessary for the use of the county; to sell and cause to be conveyed any real estate or personal property belonging to the county, and appropriate the proceeds of such sale for the use of the county; to disburse money for county purposes, and in all other cases that may be necessary to the internal improvement and local concerns of the respective counties (b). *Act Feb. 5, 1875.*

SEC. 1408. The county court, for an interruption of its proceedings, or any contempt offered it while in session, shall have power to impose a fine not exceeding fifty dollars, and to imprison the offender for each offense not exceeding twenty-four hours.

(*) But counties having a population exceeding fifteen thousand inhabitants, as shown by the last federal census, may elect a county clerk. See *art. VII, sec. 19, Const.*

(b) This embraces substantially the language of *sec. 28, art. VII, of the Constitution*, which defines the jurisdiction of the county courts. See *note (nn) to that section*. The county court must be held by one judge, except in cases otherwise provided in the constitution. *Art. VII, sec. 28. See sec. 30, same article and note.*

The county court is a superior court of record in the sense that in subject matters within its jurisdiction its action will, in the absence of evidence to the contrary, be presumed to be upon facts sufficient to justify it. *Pierce v. Edington, 38—150.*

SEC. 1409. The judge of the county court shall have power, in vacation, to approve any bond requiring the approval of the court by law, which bond, so approved by the judge, shall be submitted to the court at its next regular term for approval or rejection, and, if rejected, a new bond and surety shall be given. *Act April 3, 1873, secs. 22, 29.*

ALLOWANCES, HOW MADE (*)—WARRANTS, REGISTER THEREOF, ETC.

SEC. 1410. No moneys derived from a tax levied by the county court shall be paid out of the county treasury except on an order duly made by said court while in session, and entered upon the record of its proceedings. *Act April 3, 1873, sec. 11.*

SEC. 1411. It shall be unlawful for any county court in this state to allow any greater sum for any account, claim, demand or fee bill against the county than the amount actually due, estimating a dollar in county warrants as at par with a dollar in lawful money of the United States, dollar for dollar, according to the legal or ordinary and customary compensation for services rendered, materials furnished, salaries or fees of officers, when the same are paid in said lawful money; nor shall any county court direct the issue of any warrants, nor if directed in violation of this act, shall any clerk issue any such warrant upon such accounts, claims, demands or fee bills, for more than the actual amount so allowed, a dollar in lawful money of the United States and no more (c). *Ib., as amended by act Dec. 7, 1875.*

SEC. 1412. Before any account, claim, demand or fee bill shall be allowed by any county court, said court shall require the person or persons, or their legal representatives, claiming the same to be due to attach to said account, claim, demand or fee bill an affidavit that the same is just and correct, and that no part thereof has been previously paid; that the services charged for or materials furnished, as the case may be, were actually rendered or furnished, and the charge made therefor does not exceed the amount allowed by law or customary charges for similar services or materials, when estimated and paid in lawful money of the United States, and that such account, claim, demand or fee bill is not enlarged, enhanced, or otherwise made greater, in consequence of or by reason of any estimated (supposed or real) depreciation in the value of county warrants; which allowed claim, demand or fee bill, together with the affidavit thereto, shall be filed with the county clerk and kept in his office for the term of ten years, and the same shall be subject to the inspection of any member of the grand jury of the county at each term of the grand jury, or by the prosecuting attorney of the circuit court. *Provided*, that the affidavit herein provided for shall not be required to any juror or witness certificates, or any claim which is a matter of record, for claims in the circuit court, when the same shall be duly certified down to the county court by the clerk of the circuit court. *Ib., sec. 12, as amended by act Dec. 7, 1875, and act March 21, 1881.*

SEC. 1413. In all cases the county court shall require an itemized account of any claim presented to them for allowance, sworn to as required by the preceding section, and may in all cases require satisfactory evidence, in addition thereto, of the correctness of the account, and may examine the parties and

(*) See SEC. 1454.

(c) See *Goyne v. Ashley County*, 31—552; *Union County v. Smith*, 34—684.

witnesses on oath touching the same, and shall have power to compel the production of all books, accounts, papers or documents which may be necessary in the investigation of any matter coming properly before them and within their jurisdiction. *Act April 28, 1873, and Rev. Stat., chap. 41, sec. 35.*

SEC. 1414. The county court is hereby prohibited from auditing and allowing to any officer any fee or allowance not specifically allowed such officer by law, and in no case shall constructive fees be allowed to or paid officers by any county of this state. *Act April 28, 1873.*

SEC. 1415. Whenever any allowance shall be made by the county court and an order therefor entered upon the records, the clerk shall, when requested by the person in whose favor such allowance has been made, issue a warrant for the amount of such allowance (d), which warrant shall be in the following form:

"No. ———.

"Treasurer of the County of ———:

"Pay to ———, or bearer, ——— dollars out of any money in the treasury appropriated for county expenditures (or express the particular fund out of which the warrant is to be paid).

"Given at———, this ——— day of ———, 18——.

"A. B., Clerk.

"§ ———."

Ib., sec. 13, and Rev. Stat., chap. 41, sec. 28.

SEC. 1416. Such warrants shall be signed by the clerk of the county court, and shall be numbered progressively throughout the year, commencing on the first day of January in each year. *Rev. Stat., chap. 41, sec. 29.*

SEC. 1417. Each clerk shall keep a register of all warrants issued, in which he shall set forth the numbers, date, name of the person in whose favor drawn, on what account, and the amount thereof, which register may be in the following form:

NO.	DATE.	IN WHOSE FAVOR DRAWN.	ON WHAT ACCOUNT.	AMOUNT.	
				Dollars.	Cents.

Ib., sec. 30.

SEC. 1418. No person shall be allowed to receive from the clerk any warrant on the treasurer of the county until such person has, by himself, his agent or attorney, receipted for the same to the clerk, which receipt shall be by the clerk preserved and laid before the county court, at its next meeting, for its inspection. *Act April 28, 1873.*

(d) Warrants issued by the clerk without an order of the county court directing their issue are void and can not be made the foundation of a claim against the county. *Parsel v. Barnes, 25—261.*

An order of allowance by the county court may be reviewed or opened:

First. By appeal to the circuit court.

Second. By *certiorari*, where it appears upon the face of the record that the claim allowed was not, by law, a charge against the county, and the court had no authority or discretion to allow it upon any evidence that could be advanced.

Third. The county court is authorized to call in its warrants for review, etc., and can then reject any warrants founded upon claims illegally or fraudulently allowed.

Fourth. In chancery for fraud, accident or mistake. *State, use, etc., v. Hinkle, 37—532.*

But such order is in the nature of a judgment, and can not be impeached, collaterally, by proof that the debt had been paid before the order was made. *Cope, County Judge, v. Collins, 37—649.*

The allowance or rejection of a claim by the county court is in the nature of a judgment, and after the lapse of the term the court loses all control over it, and the same matter can not be litigated again between the same parties, except upon review in a higher court. *Lincoln County v. Simmons, 39—485, and cases cited.*

SEC. 1419. When any person shall produce proof, to the satisfaction of the county court, that he has lost any county warrant owned by him, and that the same has not been paid over on settlement with the county treasury, it shall be the duty of said court to order another warrant to be issued to the owner in lieu of the one lost (*). *Act Oct. 20, 1836.*

SEC. 1420. All warrants drawn on the treasury shall be paid out of any money in the treasury not otherwise appropriated, or out of the particular fund expressed therein, and shall be received, irrespective of their number and date, in payment of all taxes and debts accruing to the county (e). *Rev. Stat., chap. 41, sec. 33; act Dec. 17, 1846, sec. 2.*

SEC. 1421. If, upon adjudication of any warrant by the county court, it shall be found to have been fraudulently and wrongfully issued, without due authority from said court, the court shall indorse such fact thereon, and cause it to be deposited, without renewal, in the office of the clerk of said court. Any clerk who shall fraudulently or wrongfully, without authority of law, issue any such warrant, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one year, and not more than three years. *Act Dec. 17, 1846, sec. 4, as amended by act Feb. 9, 1875.*

SEC. 1422. It shall be the duty of the county clerk to enter in a book, to be provided by him for that purpose, the amount, number and date of all redeemed warrants or other evidences of indebtedness that may have been canceled, so as to show at all times the full amount of the indebtedness of the county. *Act Jan. 6, 1853.*

SEC. 1423. The county court may examine all the old warrants that have been on file since the same were redeemed and deposited with the clerk for the space of more than five years, and, if found to have been redeemed and deposited for more than five years, may cause said warrants to be burned, if the same be properly recorded as redeemed. *Act Feb. 5, 1859.*

CLERK OF COUNTY COURT, DUTIES OF.

SEC. 1424. The clerk of the county court shall keep a regular account between the treasurer and the county, charging him with all the moneys paid into the treasury, and crediting him with the amount he may have disbursed, between the period of his respective settlements with the court.

SEC. 1425. He shall keep just accounts between the county and all persons, bodies corporate or politic, chargeable with moneys payable into the county treasury.

SEC. 1426. He shall file and preserve in his office all documents, vouchers and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of such clerk, shall be admitted in evidence.

SEC. 1427. He shall issue warrants on the treasury for all moneys ordered

(*) See *Craig v. Chicot County*, 40—233.

(e) This section is not in contravention of the provision of the constitution of the United States declaring that "no state shall make anything but gold and silver coin a tender in payment of debts." It is a standing guaranty that the county will receive her warrants in payment of all taxes and debts due her. *State v. Rives*, 12—721, overruling *Gaines v. Rives*, 8—220.

See *Graham v. Parham*, 32—696; *Worthen v. Roots*, 34—356; *Daniel v. Askew*, 36—490.

to be paid by the court and keep a register thereof, as required by law, and present the same to the court at every regular term.

SEC. 1428. He shall balance and exhibit the accounts kept by him as often as required by the court, and keep his books and papers at all times ready for the inspection of the court. *Rev. Stat., chap. 41, sec. 15.*

SEC. 1429. He shall, on the first day of the term of the county court to be holden next after the annual settlement of the treasurer, make out a statement, in tabular form, stating therein the total amount of county revenue received into the treasury of such county from all sources, and also the several amounts paid out, to whom paid, and on what account; and such tabular statement shall be put up in some conspicuous place in the clerk's office of said county, so that the same may be examined and open to the inspection of any and all of the citizens of such county; and for his services in making such statement he shall receive such compensation as the county court may deem just and reasonable (f). *Act Jan. 14, 1857.*

EXHIBITS OF RECEIPTS AND ALLOWANCES.

SEC. 1430. The county court for each county shall cause to be published at the close of each regular or special session thereof a statement of all sums of money allowed, and for what purpose, by causing the clerk to post the same on the door of the court-house, or place of holding court; said court shall also cause to be made out and published as aforesaid, between the third Monday in January and the third Monday in February in each year, a report of receipts and expenditures for the year next preceding, and a detailed statement of the indebtedness and financial condition of said county; said statements may be published in a newspaper if so ordered by the court. *Act Jan. 27, 1875.*

CONTINGENT EXPENSES OF CIRCUIT COURTS.

SEC. 1431. The county court shall, at the first term of each year, make an appropriation of not less than fifty dollars for the contingent expenses of the circuit court during the current year (g). *Act Jan. 4, 1851, sec. 5.*

SEC. 1432. Such contingent expenses shall be certified to by the clerk and countersigned by the circuit judge, and when so certified the county clerk shall issue a warrant upon the treasurer for so much of such appropriation as may be necessary to pay such expenses. *Ib., and act April 3, 1873, secs. 11, 12.*

COUNTY JUDGES SHALL NOT BE INTERESTED IN CONTRACTS WITH OR PURCHASES FOR THE COUNTY.

SEC. 1433. It shall be unlawful for any county judge to be interested, in his own county, either directly or indirectly, in the building or repairing of any public building, or in the building or repairing of any public bridge, or in any toll-bridge or causeway, or in any public ferry, or in the keeping, feeding or clothing of any pauper or poor or insane person, or any real or personal

(f) For penalty for neglect to comply with the requirements of this section, see SEC. 1789.

(g) See SEC. 1376 and note, and SEC. 1488. The contingent expenses of the Pulaski Chancery Court are paid by the state. SEC. 5406.

property, stationery, furniture, wood or other materials purchased for the use of the county, or in any internal improvement to be paid for in whole or in part by the county (h). *Act April 3, 1873, sec. 21.*

PLACE OF HOLDING TERMS—HOW CHANGED.

SEC. 1434. The county courts are invested with power to change the place of holding their terms from the county seat to any other place in the county that may be deemed necessary for their security and the safety of the public records. *Provided*, that nothing herein contained shall be so construed as to affect in any manner the permanent location of county seats as now established by law.

SEC. 1435. The clerk shall remove all the books, papers and records of his office to such place as may be designated by the court as soon as practicable, and all the terms of said court shall be held at the said place. All writs shall be returnable thereto, and all acts done as valid as if they had been done and performed at the county seat. *Act May 23, 1864, secs. 1, 2.*

APPEALS (i).

SEC. 1436. Appeals shall be granted as a matter of right to the circuit court from all final orders and judgments of the county court, at any time within six months after the rendition of the same, either by the court rendering the order or judgment or by the clerk of the circuit court, with or without *supersedeas*, as in other cases at law, by the party aggrieved filing an affidavit and prayer for an appeal with the clerk of the court in which the appeal is taken; and upon the filing of such affidavit and prayer the court rendering the judgment or order appealed from, or the clerk of the circuit court, shall forthwith order an appeal to the circuit court, at any time within six months after the rendition of the judgment or order appealed from, and not thereafter. The party aggrieved, his agent or attorney, shall swear in said affidavit that the appeal is taken because the appellant verily believes that he is aggrieved, and is not taken for vexation or delay, but that justice may be done him.

SEC. 1437. Where an appeal is taken by any person in cases of allowances made for or against counties, he shall give a bond, payable to the proper county, conditioned to prosecute the appeal and save the county from all costs on account of the same being taken.

SEC. 1438. In all appeals to the circuit court from all said judgments and orders of the county court, the clerk of said court shall transmit all of the

(h) For punishment of county judge and clerk for violating the provisions of this chapter, or neglect or refusal to perform duties, see SEC. 1746.

(i) In all cases of allowances made for or against counties, cities or towns, an appeal shall lie to the circuit court of the county at the instance of the party aggrieved, or on the intervention of any citizen or resident and tax-payer of such county, city or town, on the same terms and conditions on which appeals may be granted to the circuit court in other cases; and the matter pertaining to any such allowance shall be tried in the circuit court *de novo*. In case an appeal be taken by any citizen, he shall give a bond, payable to the proper county, conditioned to prosecute the appeal and save the county from costs on account of the same being taken. *Art. VII, sec. 51, Const.*

As to appeals from rulings of the county court on objections to the levy of specific taxes, see SECS. 5607-5609.

original papers and a transcript of the record entry in the cause or matter to the clerk of the circuit court, and take his receipt therefor and file the same in place of such papers.

SEC. 1439. All appeals granted ten days before the commencement of any term of the circuit court next after the appeal is allowed shall be tried and determined at such term, unless continued for cause.

SEC. 1440. If the appeal be not granted at the term at which the judgment or order is rendered, or the appellee enters his appearance in the circuit court, he shall be summoned, actually or constructively, as provided by law for the service of a summons, to appear and answer the appeal.

SEC. 1441. The circuit court shall proceed to try all such appeals *de novo* as other cases at law (j), and in cases of allowances made against counties it shall render judgment in favor of such counties against the appellees for the amount, with interest, of all such allowances wrongfully obtained by them. *Act Feb. 20, 1883.*

SEC. 1442. When appeals are prosecuted in the circuit or supreme court, the judge of the county court shall defend the same; and all expenses or money paid out by reason of such defense shall be repaid by the proper county by order of the county court. *Act April 3, 1873, sec. 28.*

COURT FOR LEVYING TAXES AND MAKING APPROPRIATIONS (k).

SEC. 1443. The county judge, with a majority of the justices of the peace of each county, shall constitute a court for levying the taxes and making appropriations for the expenses of the county, and they shall meet annually at the court-house, in their respective counties or districts, on the first Monday in July, for the purpose of levying the county taxes and making such appropriations. *Act March 18, 1879, sec. 2, and act March 31, 1883, sec. 9.*

SEC. 1444. In case a majority of all the justices of the peace of the county is not present, the county judge shall have power and authority, and it is hereby made his duty, to order the sheriff to summon the absent justices of the peace forthwith to meet at the place fixed by law for such meeting to assist in holding said court (l).

SEC. 1445. The county judge shall be the presiding officer of said court, and shall put all motions and submit all questions proposed by any member thereof, and shall be entitled to a vote, and a concurrence of a majority of said court shall be necessary in every case to a decision. In case of the absence of the county judge, the court may elect a presiding officer from their number, the

(j) By appeal the cause is transferred to the circuit court to be tried *de novo*, just as if brought there in the first instance. *Phillips County v. Lee County*, 34—240; *Dodson v. Mayor, etc., Fort Smith*, 33—508.

(k) See art. VII, sec. 30, *Const.*

For convenience, so much of the revenue law as it may be important to refer to in this connection is given below, and will also be found in its original connection in *chap. 129*:

The county court of each county, composed of the judge and a majority of the justices of the peace of each county, shall meet annually, on the first Monday in July, for the purpose of levying the county taxes and making appropriations for the expenses of the county.

Said court shall determine the amount to be raised for ordinary county purposes, for public buildings, for support of the poor, for bridges, for roads and for interest and principal on the county debt. The court shall set forth upon the record of proceedings especially the amount to be raised for each of the above defined purposes. *Act March 31, 1883, sec. 9.*

(l) The failure of any justice of the peace to attend a levying court of his county, without a legal or reasonable excuse, is a misfeasance in office for which he may be indicted. See SEC. 1754.

question therefor being put by the clerk or his deputy, and the presiding officer may call any member of said court to preside temporarily in his place.

SEC. 1446. The sheriff in person, or by deputy, shall attend said court, preserve order and execute the orders of said court.

SEC. 1447. The clerk of the circuit court in person, or by deputy, in his capacity as clerk of the county court, shall attend the sitting of said court and keep in the county court record a fair written record of the proceedings of said court, and the names of those members of the court voting in the affirmative and of those voting in the negative on all propositions or motions to levy a tax or appropriate any money shall be entered at large on said record.

SEC. 1448. When said court shall have been duly opened the roll of the justices of the peace of the county or district shall be called, and if a majority of said justices is not present the absentees shall be summoned forthwith to meet as before directed; and whenever a majority of the justices of the peace of the county or district shall be present the following order of business shall be pursued as near as may be:

First. The clerk of said court shall submit a full written report and statement of the financial condition of the county, showing the amount of revenue received and sources thereof during the twelve months next preceding the meeting of said court; the appropriations made at the previous term of said court for each purpose, and the amount thereof drawn, and any unexpended balance or deficit that there may be; the total amount and number of county warrants drawn and amount of allowances made by the county court during the twelve months aforesaid, and unadjusted claims, either against or in favor of the county, if any, and the total value of the taxable property of said county or district, both real and personal, as shown by the assessment books of the year.

Second. The sheriff shall submit a fair written report of the county revenue collected by him from all sources, and the kind of funds collected and the disposition made thereof by him during the twelve months next preceding the meeting of said court, and shall report the number of licenses delivered to him for collection, and the amount and number thereof collected, and the number of prisoners confined in the county jail during the time aforesaid, and the number confined at the time of making said report, and the time at which the confinement of each prisoner will expire, and the cause or ground of confinement in each case, and the expense of keeping said prisoners.

Third. The treasurer of the county or district shall submit a fair written statement of the funds received by him, and from whom and on what account, and the date thereof, during the period of time aforesaid. Each of said reports shall be sworn to by the respective officers.

Fourth. The county judge shall submit a written report of the condition of all public roads and bridges in said county or district, with such recommendations as may seem advisable to him, and of the number of paupers cared for at public expense and then a charge on the county; and also the condition of the poor-house and the terms upon which the same may have been let out, and all other matters of a public nature connected therewith, and the condition of all of the public property of the county, including public buildings and records, and shall make such recommendations as may seem good to him, or as may have

been submitted by the grand jury of the county. Each of said reports shall be forthwith filed by the clerk, and be and remain in his custody as public records of the county or district; and any member of said court may cause the same, or any one of them, to be read aloud by the clerk for the information of the court, or may call for and examine the same in like manner as any other record may be examined; and the court may, by a majority vote, require either of said officers to amend his report, if it shall appear that the same is uncertain, unintelligent, too general, or not sufficiently full; and if any officer fail or refuse to make the report required by this act to be made by him on the first day of the term, or as soon as the court is organized, he shall be deemed in contempt of court, and, if he persist therein for an unreasonable time, may be fined in any sum not exceeding twenty-five dollars. *Provided*, that this clause shall not apply to the county judge.

Fifth. The presiding officer of the court may appoint one or more committees, consisting of three members of said court, to whom the said reports may be referred respectively for examination, with such instructions as may be deemed advisable by said court, which committees shall make their reports with all convenient dispatch.

Sixth. The court shall then proceed to the making of appropriations for the expenses of the county or district for the current year; but such appropriations shall not include as such expenses any item for blank printed forms used, or to be used, by any of the several officers, to wit: sheriff, clerk, coroner, collector, assessor or treasurer of said county or district, or for fuel, lights or stationery, unless such fuel, lights or stationery be used by some one of the courts of record of said county or district during the sitting thereof; and said appropriations shall be made in the following order:

1. To defray the lawful expenses of the several courts of record of the county or district and the lawful expenses of criminal proceedings in magistrates' courts, stating the expenses of each of said courts separately.
2. To defray the expenses of keeping persons accused or convicted of crime in the county jail.
3. To defray the expenses of making the assessment and tax-books and collecting taxes on real and personal property.
4. To defray the lawful expense of public records of the county or district.
5. To defray the expense of keeping paupers of the county or district.
6. To defray the expense of building and repairing public roads and bridges and repairing and taking care of public property.
7. To defray such other expenses of county government as are allowed by the laws of this state.
8. After the appropriations shall have been made, the court shall then levy the county, municipal and school taxes for the current year (m).

SEC. 1449. The court shall specify the amount of appropriations for each purpose in dollars and cents, and the total amount of appropriations for all county or district purposes for any one year shall not exceed ninety per cent of the taxes levied for that year (n).

(m) See SECS. 5599, 5605.

For proceedings, by petition or remonstrance, on objection to the levy of any specific tax for illegality and appeals to the circuit court from rulings of the county court against such objection, see SECS. 5607-5609.

(n) This section does not prevent the court from also appropriating the revenue accruing to the county from fines, forfeitures and licenses. *Allis v. Jefferson County*, 34—307.

SEC. 1450. It shall be the duty of the clerk annually, and immediately after the adjournment of the court for the levy of taxes and the making of the appropriations, to open a book to be kept for that purpose, in which he shall debit each appropriation by the amount appropriated therefor, and as the allowances are made by the county court he shall credit each appropriation by the allowance ordered to be paid out of such appropriation.

SEC. 1451. No county court or agent of any county shall hereafter make any contract on behalf of the county unless an appropriation has been previously made therefor and is wholly or in part unexpended.

SEC. 1452. The taxes levied for county purposes hereinbefore named and specified shall be extended upon the tax-books under the general head of county expenses, and warrants drawn by the clerk shall specify the fund or appropriation upon which the same are drawn respectively, and shall be made payable to the person in whose favor the allowance was made, or bearer; and when so lawfully drawn and issued shall be receivable by the sheriff and collector of revenue of the county for all taxes lawfully levied by the county court, or license or debts due to the county, subject to the next succeeding section.

SEC. 1453. The county taxes of any county of this state, levied in pursuance of law, shall only be payable in the lawful currency of the United States, or scrip or warrants of the county by whose authority the same were issued, drawn in pursuance of law and not inconsistent with this act. *Provided*, that nothing in this section shall be so construed as to affect in any manner the provisions and intent of an act of the general assembly of this state entitled, "An act to prevent discrimination in county warrants or county scrip," approved December 14, 1875.

SEC. 1454. Every order of allowance made by the county court shall set forth the appropriation out of which the same is to be paid (o).

SEC. 1455. If a majority of the justices of the peace of the county or district be not present on the first day of the term, summons shall be issued for the absentees as hereinbefore provided, and those present may adjourn from day to day until a majority be present. *Provided*, the county judge may transact any business of the county court which he is empowered by law to transact, if the said terms be the regular terms of the county court as fixed by law (p).

SEC. 1456. Nothing in this act shall be so construed as to enlarge the functions or powers of the county court of Sebastian County as under existing laws. *Act March 18, 1879, secs. 2-14.*

SEC. 1457. The justices of the peace who shall hold or assist the county judge in holding the terms of the county courts in their respective counties in levying county taxes, and in making appropriations for the expenses of the county, shall be entitled each to three dollars per day for each day that they may be engaged in holding such court, payable out of the county treasury. *Act Feb. 5, 1875.*

(o) Since the act of March 18, 1879, the county court is not prohibited from allowing claims against the county in excess of the appropriations. The law makes it the duty of the clerk to issue warrants on allowances when made. *Worthen v. Roots*, 34—356.

(p) The levying of county taxes and making appropriations for county expenses must be by the court when held by the county judge and justices of the peace. The making of contracts and allowances for county expenses must be by the court when held by the county judge alone. *Lawrence County v. Coffman*, 36—641.

CHAPTER XLIV.

COURTS OF RECORD.

SECTION

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SECTION 1458. The supreme, circuit, probate and county courts shall each keep a seal. *Rev. Stat., chap. 43, sec. 8.*

SEC. 1459. All seals of courts shall present the same impressions, emblems and devices as are presented by the seal of state (a), except the surrounding words, which shall be such as to indicate the court or office to which they severally belong. *Act May 3, 1864, sec. 3.*

SEC. 1460. The impression of the seal of any court by stamp shall be sufficient sealing in all cases where sealing is required. *Rev. Stat., chap. 43, sec. 11.*

SEC. 1461. When no official seal is provided the clerk may use his private seal for the authentication of any record, process or proceeding required by law to be authenticated by the seal of his court, and the attestation of the clerk, stating that he has no seal of office and that he has affixed his private seal, shall be received as sufficient authentication without requiring any proof of such private seal or that it was affixed by the clerk. *Ib., sec. 12.*

SEC. 1462. The records of proceedings at law shall be in books separate and distinct from the records and proceedings in equity. *Ib., sec. 14.*

SEC. 1463. Judgment by default rendered by the circuit courts may be recorded in a separate book for that purpose. The orders showing the rendition of such judgments shall be signed by the judge of the court. *Civil Code, sec. 424.*

SEC. 1464. Full entries of the orders and proceedings of all courts of record, of each day, shall be read in open court on the morning of the succeeding day,

(a) For emblems, etc., of seal of state, see SEC. 6308.

except on the last day of the term, when the minutes shall be read and signed at the rising of the court (b). *Rev. Stat., chap. 43, sec. 16.*

SEC. 1465. In making out transcripts of records, except on writs of error and appeals, the bills of exception shall not be inserted, unless specially required by the applicant therefor. *Ib., sec. 17.*

SEC. 1466. All writs, process, proceedings and records in any court shall be in the English language, except that the proper and known name of process and technical words may be expressed in the language heretofore and now commonly used; and shall be made out on paper or parchment, in a fair and legible character, in words at length, and not abbreviated, but such abbreviations as are now commonly used in the English language may be used, and numbers may be expressed by arabic figures or roman numerals, in the customary way. *Ib., sec. 18.*

SEC. 1467. The sittings of every court shall be public, and every person may freely attend the same. *Ib., sec. 19.*

SEC. 1468. All courts shall have power to issue all writs and process which may be necessary in the exercise of their respective jurisdiction, according to the principles and usages of law. *Ib., sec. 20.*

SEC. 1469. The sheriffs of the several counties shall be sheriffs of the several courts in their respective counties; and the sheriff in the county in which the supreme court is held shall be sheriff of that court. *Ib., sec. 21.*

SEC. 1470. Each court may enforce, by attachment, the return of any writ or process issued out of the same court, and the payment of moneys had and received by any sheriff, coroner, constable, attorney or collector in his official capacity, and the delivery of papers intrusted to him officially and unlawfully withheld. *Ib., sec. 22.*

SEC. 1471. No judge shall sit on the determination of any cause or proceeding in which he is interested or related to either party within the fourth degree of consanguinity or affinity, or shall have been of counsel, or have presided in any inferior court (c). *Ib., sec. 24, and art. VII, sec. 20, Const.*

SEC. 1472. If a term of any court shall not be held at the time prescribed by law, such court shall stand adjourned until the next regular term, and all cases, civil, penal and criminal, shall stand adjourned over until the next term of such court. *Ib., sec. 26.*

(b) The statute does not require the circuit judge to sign the record of the preceding day every morning, but only at the close of the term, and the omission of the judge to sign the record at the close of the term will not invalidate judgments and decrees of the term, though such omission would be gross negligence and subject the judge to animadversion. *Slocumb, Richards & Co., ex parte, 9—375.*

(c) No judge or justice shall preside in the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him by consanguinity or affinity within such degree as may be prescribed by law, or in which he may have been of counsel, or have presided in any inferior court. *Art. VII, sec. 20, Const.*

It is no ground of error that a judge who was incompetent to sit in a cause took jurisdiction of it so far as to grant a continuance, for it would have been continued by operation of law, without action of the judge, he being incompetent to try it. *Stone v. Robinson, 9—469.*

The husband of the aunt is related to the husband of her niece, within the fourth degree of affinity. *Kelly et al v. Neeley, judge, 12—675.*

A circuit judge is not disqualified to preside where he is related by affinity, within the constitutional degrees, to one of the parties in a cause who is merely a trustee and has no interest in the determination of the cause. *Fowler, adm., et al. v. Byers, adm., 16—196.*

An application to the supreme court, in the first instance, for a writ of *certiorari* to a justice of the peace because the circuit judge is of kin to the petitioner, and disqualified, should show how he was related. *Allston, ex parte, 17—580.*

SEC. 1473. It shall be the duty of the clerk of such court, in such case, to enter in his docket a continuance of all suits and prosecutions. *Ib.*, sec. 27.

SEC. 1474. No writ, process, plea or proceeding whatsoever, civil or criminal, shall be deemed discontinued or abated by the failure of any term or session of any court, nor by the failure to enter a continuance of any suit or cause on the record; but the same shall be continued and proceed as if no such failure had happened. *Ib.*, sec. 35.

SEC. 1475. When any change shall be made, by law, in the times of holding any court, such change shall in no wise operate to affect or impair, avoid, annul or discontinue any suit, action, appeal, recognizance, bail bond, notice or process, original, mesne or final, taken, instituted or pending in such court, or returnable to or in such court, but the same shall be and stand valid and effectual in such court, at such new term, in every respect as if no change had been made in the time of holding the same. *Act Dec. 22, 1856, sec. 3.*

SEC. 1476. Special adjourned sessions of any court may be held in continuation of the regular term, upon its being so ordered by the court or judge in term time, and entered by the clerk on the record of the court (d). *Rev. Stat., chap. 43, sec. 28.*

SEC. 1477. The judge of any circuit court may at any time hold a special term, for the trial of persons confined in jail, by making out a written order to that effect and transmitting it to the clerk, who shall enter the same on the records of the court (e). *Ib.*, sec. 29.

SEC. 1478. The judge shall, in such order, direct the clerk to issue a *venire facias* to the sheriff, requiring him to summon a grand jury to attend such special term of the court, if any person shall be confined in jail who may not have been indicted. *Ib.*, sec. 30.

SEC. 1479. When a special term of the court shall be ordered under the preceding provisions, the judge ordering the same shall cause a notice thereof to be served on the prosecuting attorney for such circuit ten days before the commencement of such special term. *Ib.*, sec. 31.

SEC. 1480. The sheriff of the proper county, or any other person appointed by the judge, may serve such notice. *Ib.*, sec. 32.

SEC. 1481. No such adjourned session or special term shall interfere with any other court to be held by the same judge. *Ib.*, sec. 33.

(d) All courts, unless restrained by statute, have a right of adjourning their sittings to a distant day, and proceedings had at the adjourned session will be considered as the proceedings of the term so adjourned. *Dunn v. State, 2—229.*

The circuit court, under this section, may provide for a special adjourned term, to be held after the time for holding the next regular term in another county of the circuit. *Galbreath v. Mitchell, 32—278.* An adjourning order to a distant day, made by the court, is a sufficient entry upon the record of an order for an adjourned session. *Davies v. State, 39—448.*

(e) The power to hold a special term being a special power, every circumstance necessary to its exercise must exist and be made to appear of record, otherwise the power can not appear to have been legally exercised. *Pulaski County v. Lincoln, 9—326, and Dunn v. State, 2—230.* The authority to hold such special term depends upon the following facts and circumstances:

First. That some person is confined in jail who may be lawfully tried upon some criminal charge.

Second. That it shall not interfere with any other court to be held by the same judge.

Third. That it shall not be held within twenty days of the regular term of such court.

Fourth. That an order therefor be made out by the judge, and by him transmitted to the clerk.

Fifth. That the same be entered on the records of the court. *Dunn v. State, 2—230.*

The power of the court, at such special term, is confined to the trial of the persons confined in jail when the order was made, which must be at least ten days before the term; and no other persons can be tried at such term. *Ib.*

SEC. 1482. No special term of the circuit court shall be held within twenty days of the regular term of such court. *Ib.*, sec. 34.

SEC. 1483. No court shall be opened or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury, and every adjournment of a court on Saturday shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate when it may be necessary in criminal cases to preserve the peace or arrest the offenders (f). *Ib.*, sec. 36.

SEC. 1484. The several sheriffs are authorized and required to furnish the fuel which may be necessary for the use of the court, and the clerks shall furnish all blank books and stationery for the use of the same. *Ib.*, sec. 43.

SEC. 1485. The several courts shall audit and adjust the accounts of the sheriff and clerk for all expenditures made under this act, and certify the balance accordingly. *Ib.*, sec. 44.

SEC. 1486. All such expenditures accruing in the supreme court shall be paid out of the state treasury out of any moneys appropriated for the contingent expenses of the supreme court. *Ib.*, sec. 45.

SEC. 1487. The auditor shall draw his warrant for the amount of such expenditures, and the certificate of the court shall be a sufficient voucher. *Ib.*, sec. 46.

SEC. 1488. The expenses accruing in the circuit courts shall be paid out of the county treasury in which the court is held in the same manner as other demands (g). *Ib.*, sec. 47.

SEC. 1489. No court or judge shall have power or authority to appoint a stenographer whose salary, costs, expenses or per diem, or any part thereof, shall be paid by the state or any county, or taxed as costs against any party in any proceeding, either civil or criminal. *Act Feb. 27, 1873.*

SEC. 1490. All legal proceedings heretofore had and concluded under the "Chapters of the Digest" shall be as valid as if had in the proper courts and in the manner prescribed by law. *Act March 7, 1873.*

(f) As to when process in civil actions may issue and be executed on Sunday or other holiday, see SECS. 5309—5312.

(g) See SECS. 1376, 1431. The compensation of jurors is part of the current expenses of holding the circuit courts, and is not taxable as costs. *Independence County v. Dunkin*, 40—329.

CHAPTER XLV.

CRIMINAL LAW (*).

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 1495.
 III. PRINCIPALS AND ACCESSORIES.—Sec. 1505.
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 1532.
 VII. ASSAULT—BATTERY—AGGRAVATED ASSAULT—ASSAULT
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 VIII. RAPE—ABDUCTION—SODOMY—INCEST.—Sec. 1568.
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 COHABITATION.—Sec. 1585.

(*) For penal sections not embraced in this chapter and not referred to from the title as follows:

- For penalties for issuing or passing change, tickets, etc., SECS. 514, 515, 520.
 For violating act to protect civil rights, etc., SECS. 522, 524, 526, 530, 531, 536.
 Penalty for failure of constable to perform official duties, SEC. 593.
 For demanding illegal toll at bridges, etc., SEC. 509.
 For enticing students into practice of gaming, etc., SEC. 1008.
 For act or omission of clerk amounting to misdemeanor, SEC. 560.
 Penalty for burying body before inquisition, SEC. 719.
 For selling or giving away liquors near Industrial University, SECS. 3706-3709, 3715.
 For misdemeanor in office or neglect of duty by prosecuting attorney, SEC. 5327.
 For failure of officer to deliver records, etc., to successor, SEC. 5339.
 For failure to execute warrant for seizure of records, etc., SEC. 5343.
 For violations of the marriage laws, SECS. 4596, 4601, 4607, 4616-4618, 4620.
 For failure of justice to turn over books to successor, SEC. 4021.
 For acting as justice after removal from township, SEC. 4023.
 For violations of the school laws, SECS. 6128, 6129, 6165, 6238, 6240, 6252, 6253, 6272.
 For offense by employe of railroad company, SEC. 5545.
 For unlawful trapping and hunting, SEC. 6458.
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 For sale by officer of exempted property, SEC. 3012.
 For refusing to receive execution, etc., SEC. 3066.
 For holding commission, etc., under foreign government, SECS. 6368, 6369.
 For refusing to aid sheriff, etc., SEC. 6374.
 For refusal of sheriff to perform official duties, SEC. 6333.
 For misdemeanor in office of recorder, SEC. 5568.
 For failure to certify or furnish list of defaulters, SEC. 2521.
 For violation of trade mark, SEC. 6452.
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 For defrauding person entitled to lien on crop, etc., SEC. 4445.
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 For unlawful sale of poisons, SEC. 5322.
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- XI. CRIMINAL ABORTION.—Sec. 1589.
- XII. MAIMING AND ASSAULT WITH INTENT TO MAIM.—Sec. 1591.
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- XIV. KIDNAPING.—Sec. 1603.
- XV. FALSE IMPRISONMENT.—Sec. 1606.
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- XXV. PERJURY.—Sec. 1703.
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SEC. 1492. Public offenses are felonies and misdemeanors.

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SECTION 1495. A lunatic or insane person, without lucid int
 be found guilty of any crime or misdemeanor with which he r

SEC. 1496. A person that becomes insane or lunatic after
 of a crime or misdemeanor shall not be tried for the offense du
 ity or lunacy.

SEC. 1497. A person shall be considered of sound mind w
 idiot or lunatic, or affected with insanity, and who hath arriv
 fourteen years, or before that age, if such person know the disti
 good and evil.

(a) See *Rector v. State*, 6--187; *Yoes v. State*, 9--42; *Sikes v. State*, 30--503.

SEC. 1498. An infant under twelve years of age shall not be found guilty of any crime or misdemeanor (b).

SEC. 1499. An idiot shall not be found guilty or punished for any crime or misdemeanor.

SEC. 1500. Any person counseling, advising or encouraging an infant under the age of twelve years, a lunatic or idiot to commit any offense shall be punished for such offense, when committed, as principal, in the same manner and to the same extent as if he had committed the offense directly, and without the intervention of such infant, lunatic or idiot.

SEC. 1501. Married women acting under the threats, commands or coercion of their husbands shall not be found guilty of any crime or misdemeanor if it appear, from all the facts and circumstances of the case, that violence, threats, commands or coercion were used (†); and in such cases the husband shall be prosecuted as principal, and receive the punishment which otherwise would have been inflicted on the wife if she had been found guilty.

SEC. 1502. Drunkenness shall not be an excuse for any crime or misdemeanor (c), unless such drunkenness be occasioned by the fraud, contrivance or force of some other person, for the purpose of causing the perpetration of an offense, in which case the person so causing said drunkenness, for such evil purpose, shall be considered principal, and suffer the same punishment as would have been inflicted on the person committing the offense if he had been possessed of sound reason and discretion.

SEC. 1503. Acts committed by misfortune or accident shall not be deemed criminal when it appears there was no evil design, intention or culpable negligence.

SEC. 1504. A person committing a crime or misdemeanor not punishable with death, under threats or menaces which show that his life or person was in danger, or that he had a reasonable cause to believe, and did believe, that his life or person was in danger, shall not be found guilty; and such threats or menaces being proved, the person compelling by such threats or menaces the commission of the offense shall be considered as principal, and suffer the same punishment as if he had perpetrated the offense. *Rev. Stat., chap. 44, div. 1, secs. 3-12.*

(b) The common law presumption that one between the ages of twelve and fourteen years is incapable of discerning good from evil, until the contrary be affirmatively shown, still prevails. *Dove v. State*, 37-261.

(†) The coercion of the husband must be made to appear from all the facts and circumstances, and is not to be presumed merely from his presence. *Edwards v. State*, 27-493.

(c) See *Wood v. State*, 34-341; *Harris v. State*, *Ib.*, 469.

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1507. After the fact, defined.
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1509. Accessories in rape, how punished.
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SECTION 1505. An accessory is he who stands by, aids, abets or assists, or who, not being present aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime (d).

SEC. 1506. He who thus aids, assists, abets, advises or encourages shall be deemed in law a principal, and be punished accordingly (e).

SEC. 1507. An accessory after the fact is a person who, after a full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. *Rev. Stat., chap. 44, div. 3, art. 8.*

SEC. 1508. All persons being present, aiding and abetting, or ready and consenting to aid and abet, in any felony, shall be deemed principal offenders, and indicted and punished as such (*).

SEC. 1509. Accessories before or after the fact to the crime of rape shall be punished by imprisonment in the penitentiary for a period not less than five nor more than twenty-one years.

SEC. 1510. Accessories before the fact to all other felonies shall receive the same punishment as principals; and all accessories after the fact shall receive the same punishment as their principals, except in cases of murder in the first degree, who shall be punished as principals in murder in the second degree. *Provided*, that persons standing to the accused in the relation of parent, child, brother, sister, husband or wife shall not be deemed accessories after the fact, unless they resist the lawful arrest of such offenders. *Act Dec. 17, 1838, secs. 4-10.*

SEC. 1511. An accessory before or after the fact may be indicted, arraigned, tried and punished, although the principal offender may not have been arrested and tried, or may have been pardoned or otherwise discharged. *Rev. Stat., chap. 45, sec. 98.*

IV.—TREASON AND MISPRISION OF TREASON.

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1512. Treason defined.
1513. punishment.

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1514. Treason, misprision of, defined.
1515. punishment.

SECTION 1512. Treason against the state shall consist only in levying war against the state, or adhering to its enemies, giving aid and comfort. No per-

(d) In misdemeanors there are no accessories; all parties concerned, if guilty at all, are principals. *Hubbard v. State*, 10—378; *Sanders v. State*, 18—198. See *Freel v. State*, *Id.*, 219.

(e) One who advises or encourages the commission of a felony, but is not actually or constructively present when it is committed, can not be convicted under an indictment charging him as principal in the crime. *Boze Smith v. State*, 37—274; *Williams v. State*, 41—173.

(*) See *Wright v. State*, 42—94.

son shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 1513. Any person convicted of treason shall suffer death.

SEC. 1514. Misprision of treason shall consist in the knowledge and concealment of treason actually committed by others, without otherwise assenting to or participating in the crime.

SEC. 1515. Any person duly convicted of misprision of treason shall be punished by fine not exceeding one thousand dollars, and imprisonment not exceeding one year. *Rev. Stat., chap. 44, div. 2.*

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- 1523. Aiding to commit suicide.

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- 1528. Killing in a duel.
- 1529. Death must ensue within a year and a day.
- 1530. Punishment for murder.
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SECTION 1516. Murder is the unlawful killing of a human being, in the peace of the state, with malice aforethought, either express or implied (†).

SEC. 1517. The manner of the killing is not material, further than it may show the disposition of mind, or the intent with which the act was committed.

SEC. 1518. Express malice is that deliberate intention of mind unlawfully to take away the life of a human being which is manifested by external circumstances capable of proof.

SEC. 1519. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing manifest an abandoned and wicked disposition (f). *Rev. Stat., chap. 44, div. 3, art. 1, secs. 1-4.*

SEC. 1520. The killing being proved, the burden of proving circumstances of mitigation that justify or excuse the homicide shall devolve on the accused, unless by the proof on the part of the prosecution it is sufficiently manifest that the offense committed only amounted to manslaughter, or that the accused was justified or excused in committing the homicide. *Ib., art. 2, sec. 35.*

OF THE DEGREES OF MURDER (g).

SEC. 1521. All murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate, malicious and

(†) See *McCoy v. State*, 8—451; *Atkins v. State*, 16—569.

(f) When it is shown that the killing was done with a deadly weapon, and no circumstances of mitigation, justification or excuse appear, the law implies malice. *Sweeney v. State*, 35—585; *Burris v. State*, 38—221; *McAdams v. State*, 25—405. See also *Howard v. State*, 34—433.

(g) As to the distinction between murder in the first degree and murder in the second degree, see the following cases: *Bivens v. State*, 11—455; *McAdams v. State*, 25—405; *McKenzie v. State*, 26—334; *Palmore v. State*,

premeditated killing (*), or which shall be committed in the perpetration of, or in the attempt to perpetrate, arson, rape, robbery, burglary or larceny, shall be deemed murder in the first degree.

SEC. 1522. All other murder shall be deemed murder in the second degree. *Act Dec. 17, 1838, sec. 1.*

ACTS DECLARED TO BE MURDER.

SEC. 1523. Every person deliberately assisting another in the commission of suicide or self-murder shall be adjudged guilty of murder. *Rev. Stat., chap. 44, div. 3, art. 2, sec. 4.*

SEC. 1524. If any person shall lose his life in consequence of any arson, the offender shall be deemed guilty of murder and punished accordingly. *Rev. Stat., chap. 44, div. 4, art. 1, sec. 8.*

SEC. 1525. If any captain, pilot or other person having the charge or control of any steamboat or other vessel shall willfully and maliciously run such steamboat or other vessel on board of or against any other vessel or raft, and thereby any human being should be killed, he shall be adjudged guilty of murder or manslaughter, as the circumstances of the case may be. *Rev. Stat., chap. 44, div. 3, art. 2, sec. 13.*

SEC. 1526. Every person who shall unnecessarily kill another while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be adjudged guilty of murder or manslaughter, according to the circumstances. *Ib., sec. 8.*

SEC. 1527. If any officer exceed the bounds of moderation in executing the sentence under which he acts, either in manner, the instrument or quantity of punishment, and death ensue, it will be murder or manslaughter, according to the circumstances of the case. *Ib., sec. 16.*

SEC. 1528. Every person who shall fight a duel with a deadly weapon, if death ensue, shall be adjudged guilty of murder. *Rev. Stat., chap. 44, div. 5, art. 4, sec. 1.*

SEC. 1529. In order to make the killing either murder or manslaughter, it is requisite that the person injured die within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the offense was committed shall be reckoned the first day (†). *Rev. Stat., chap. 44, div. 3, art. 1, sec. 6.*

SEC. 1530. Every person convicted of murder in the first degree, or as accessory before the fact to such murder, shall suffer death by hanging by the neck. *Act Dec. 17, 1838, sec. 2.*

SEC. 1531. Every person convicted of murder in the second degree shall be sentenced to undergo imprisonment in the penitentiary for a period not less than five years, nor more than twenty-one years. *Ib.*

29—248; *Sweeney v. State*, 35—585; *Harris v. State*, 36—127; *Burris v. State*, 38—221; *Fitzpatrick v. State*, 37—238; *Casat v. State*, 40—511.

(*) See *Wright v. State*, 42—94.

As to indictment for murder, see *Anderson v. State*, 5—445; *Reed v. State*, 16—199; *McAdams v. State*, 25—405; *Edwards v. State*, *Ib.*, 444; *Hancy v. State*, 34—263; *Edmonds v. State*, *Ib.*, 720; *Wright v. State*, 35—639; SEC. 2105, *note* (ee).

(†) See *Kee v. State*, 28—155.

VI.—MANSLAUGHTER AND JUSTIFIABLE AND EXCUSABLE HOMICIDE.

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 1561. General definition.

SECTION 1532. Manslaughter is the unlawful killing of a human being, without malice express or implied, and without deliberation.

SEC. 1533. Manslaughter must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible (h).

SEC. 1534. If the killing be in the commission of an unlawful act, without malice, and without the means calculated to produce death, or in the prosecution of a lawful act, done without due caution and circumspection, it shall be manslaughter (i). *Rev. Stat., chap. 44, div. 3, art. 2, secs. 1-3.*

SEC. 1535. The willful killing of an unborn quick child, by any injury to the mother of such child which would be murder, if it resulted in the death of such mother, shall be adjudged manslaughter.

SEC. 1536. Every person who shall administer to any woman pregnant with a quick child any medicine, drug or substance whatever, or shall employ any instrument or other means, with intent thereby to destroy such child, and thereby shall cause its death, unless the same shall be necessary to preserve the life of the mother, or shall have been advised by a regular physician to be necessary for such purpose, shall be deemed guilty of manslaughter.

SEC. 1537. The killing of a human being, without a design to effect death, in the heat of passion, but in a cruel and unusual manner, unless it be committed under circumstances that would constitute excusable or justifiable homicide, shall be adjudged manslaughter. *Ib., secs. 5-7.*

SEC. 1538. The killing of a human being in the heat of passion, by or with a dangerous weapon, in any case except wherein the killing is herein declared to be excusable or justifiable, shall be adjudged manslaughter.

SEC. 1539. If the owner of a mischievous animal, knowing its propensities, willfully suffer it to go at large, or shall keep it without ordinary care, and such animal, while at large or not confined, shall kill any human being, who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be adjudged guilty of manslaughter.

(h) See *Atkins v. State*, 16—569; *Fitzpatrick v. State*, 37—238; *Harris v. State*, 34—469.

(i) See *State v. Hardester and Brown*, 38—605.

SEC. 1540. Any person navigating any boat or vessel for gain who shall willfully or negligently receive so many passengers, or such a quantity of other lading, that by means thereof such boat or vessel shall sink or be upset, and thereby any human being shall be drowned, or shall be otherwise killed, shall be adjudged guilty of manslaughter.

SEC. 1541. If the captain or any other person having the charge of any steamboat used for the conveyance of passengers, or if the engineer or the person having charge of the boiler of such boat, or any other apparatus for the generation of steam, shall, from ignorance or gross negligence, or for the purpose of excelling any other boat in speed, create or allow to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any human being shall be killed, every such captain, engineer or other person shall be deemed guilty of manslaughter. *Ib.*, *secs.* 9-12.

SEC. 1542. If any physician, while in a state of intoxication, without the design to effect death, administer any poison, drug or medicine, or do any other act to any person which shall produce the death of such person, he shall be adjudged guilty of manslaughter. *Ib.*, *sec.* 14.

SEC. 1543. If any woman shall endeavor privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, that it may not come to light, although it can not be proved that it was murdered, every such mother shall suffer the same punishment as for manslaughter (*).

SEC. 1544. Nothing contained in the last preceding section shall be so construed as to prevent such mother from being indicted for the murder of such bastard child. *Ib.*, *secs.* 17, 18.

SEC. 1545. Whoever shall be convicted of the crime of voluntary manslaughter shall undergo imprisonment in the penitentiary for a period of not less than two nor more than seven years.

SEC. 1546. Every person who shall be convicted of involuntary manslaughter shall be imprisoned in the penitentiary for a period not exceeding twelve months (j). *Act Dec. 17, 1838, sec. 3.*

HOMICIDE—JUSTIFIABLE AND EXCUSABLE.

SEC. 1547. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, person or property, against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony. *Rev. Stat., chap. 44, div. 3, art 2, sec. 20.*

SEC. 1548. If the homicide with which any person shall be charged shall appear upon the trial to be justifiable or excusable, such person shall be fully acquitted and discharged. *Ib.*, *sec. 34.*

SEC. 1549. An attempt to commit murder, rape, robbery, burglary, or any other aggravated felony, although not herein specially named, upon either the person or property of any person, shall be justification of homicide. *Ib.*, *sec. 21.*

(*) An indictment under this section must allege that the child was a bastard. *Sullivan v. State*, 36-64.

(j) See *Winkler v. State*, 32-539; *Brown v. State*, 34-232.

SEC. 1550. Every man's house or place of residence shall be deemed and adjudged, in law, his castle (k). *Ib.*, sec. 22.

SEC. 1551. A manifest attempt and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling or being therein, shall be a justification of homicide. *Ib.*, sec. 23.

SEC. 1552. A bare fear of those offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under their influence, and not in a spirit of revenge. *Ib.*, sec. 24.

SEC. 1553. In ordinary cases of one person killing another in self-defense, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily injury, the killing of the other was necessary, and it must appear also that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further contest before the mortal blow or injury was given (l). *Ib.*, sec. 25.

SEC. 1554. If an officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justifiable in killing the assailant. *Ib.*, sec. 26.

SEC. 1555. If any officer or private person attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, forgery, counterfeiting or any other crime made felony by the statute laws of this state, and he be resisted in the endeavor to take the person accused, and by reason of such resistance the person so resisting be killed, the officer or private person so killing shall be justified. *Ib.*, sec. 27.

SEC. 1556. An officer or private person, to be justified in killing a person accused of any felony as herein provided, shall have used all reasonable efforts to take the accused, without success, and there must have been, in all probability, no prospect of preventing injury from such resistance, or the escape of the person accused. *Ib.*, sec. 28.

SEC. 1557. Justifiable homicide may consist in unavoidable necessity without any will or design, and without any inadvertence or negligence in the party killing. *Ib.*, sec. 29.

SEC. 1558. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a court of competent authority shall be justified. *Ib.*, sec. 30.

SEC. 1559. The officer must, however, in the performance of his duty in carrying into effect the execution, proceed in accordance with the sentence of the court and the provisions of the law of the state. *Ib.*, sec. 31.

SEC. 1560. Excusable homicide by misadventure is where a person, in doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an ax, and the head flies off and kills a bystander, or where an officer is properly punishing a criminal and happens to be the occasion of his death, it is only a misadventure, for the act of correction was lawful. *Ib.*, sec. 32.

(k) One who enters a dwelling house by force is indictable at common law. *State v. Leathers*, 31—44.

(l) In order to justify the taking of life in self-defense, the party must employ all means within his power and consistent with his safety to avoid the danger and avert the necessity. *McPherson v. State*, 29—225; *Palmore v. State*, *Ib.*, 248; *Fitzpatrick v. State*, 37—238; *Dolan v. State*, 40—454.

SEC. 1561. All other instances which stand upon the same parity of reason and justice as those enumerated shall be adjudged murder, manslaughter, justifiable or excusable homicide, according to the circumstances of the respective cases. *Ib.*, sec. 33.

VII.—ASSAULT—BATTERY—AGGRAVATED ASSAULT— ASSAULT WITH INTENT TO MURDER.

SECTION

1562. Definition of assault.

1563. of assault and battery.

1564. Punishment for simple assault.

SECTION

1565. Punishment for assault and battery.

1566. Assault with intent to inflict bodily injury.

1567. Assaults or attempts to murder.

SECTION 1562. An assault is an unlawful attempt, coupled with present ability, to commit a violent injury on the person of another. *Rev. Stat.*, chap. 44, div. 3, art. 5, sec. 1.

SEC. 1563. Assault and battery is the unlawful striking or beating the person of another. *Ib.*, sec. 5.

SEC. 1564. A simple assault, unattended with any apparent design to commit homicide or felony, shall, upon the conviction of any person thereof, be punished by fine, not exceeding one hundred dollars. *Ib.*, sec. 4.

SEC. 1565. Any person who shall be convicted of an assault and battery shall be fined in any sum not exceeding two hundred dollars. *Provided*, that this section shall not be construed to apply to assaults and batteries of an aggravated character. *Act Jan. 6, 1857.*

SEC. 1566. If any person assault another with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant disposition, he shall be adjudged guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty nor exceeding one thousand dollars, and imprisoned not exceeding one year. *Rev. Stat.*, chap. 44, div. 3, art. 5, sec. 3.

SEC. 1567. Whoever shall, feloniously, willfully and with malice aforethought, assault any person, with intent to murder or kill, or shall administer, or attempt to give, any poison or potion, with intent to kill or murder, and their counselors, aiders and abettors, shall, on conviction thereof, be imprisoned in the penitentiary not less than three nor more than twenty-one years (m). *Act Dec. 17, 1838, sec. 9.*

(m) To sustain an indictment for an assault with intent to murder, the evidence must be such as would warrant a conviction for murder if death had ensued from the assault. *Lacefield v. State*, 34—275, and cases there cited.

For shooting at, etc., with intent to kill or maim, SEC. 1596.

For drawing gun or other deadly weapon for the purpose of frightening or intimidating, etc., see SEC. 1806.

For assault with intent to commit larceny, SEC. 1633.

For assault with intent to maim, SEC. 1598.

For assault with intent to rob, SEC. 1601.

For assaulting officer in the exercise of his office, SEC. 1766.

For assault with intent to commit rape, SEC. 1572.

As to indictment for assault with intent to kill, see *Lacefield v. State*, 34—275.

VIII.—RAPE—ABDUCTION—SODOMY—INCEST.

SECTION

1568. Rape, definition of.
 1569. what proof sufficient in.
 1570. penalty for.
 1571. Abusing child under age of puberty, penalty.
 1572. Assault with intent to commit rape, penalty.
 1573. Administering potion with intent, etc., penalty.

ABDUCTION.

1574. Abduction defined; penalty.

SECTION

1575. Forced marriage or defilement, penalty.
 1576. attempts, penalty.

SODOMY.

1577. Sodomy, punishment for.

INCEST.

1578. Incest defined.
 1579. punishment for.

SECTION 1568. Rape is the carnal knowledge of a female forcibly and against her will (n). *Rev. Stat., chap. 44, div. 3, art. 4, sec. 1.*

SEC. 1569. Proof of actual penetration into the body shall be sufficient to sustain an indictment for a rape, or for the crime against nature. *Rev. Stat., chap. 45, sec. 163.*

SEC. 1570. Any person convicted of the crime of rape shall suffer the punishment of death. *Act Dec. 14, 1842.*

SEC. 1571. Every person convicted of carnally knowing, or abusing unlawfully, any female child under the age of puberty shall be imprisoned in the penitentiary for a period not less than five nor more than twenty-one years. *Act Dec. 17, 1838, sec. 4.*

SEC. 1572. Whoever shall feloniously, willfully and with malice aforethought, assault any person with intent to commit a rape, and his counselors, aiders and abettors, shall, on conviction thereof, be imprisoned in the penitentiary not less than three nor more than twenty-one years. *Act Dec. 17, 1838, sec. 9.*

SEC. 1573. Every person who shall, with the intent to commit a rape, administer to any female any potion, substance or liquid, with intent to produce such stupor, or imbecility of mind, or weakness of body, as to prevent effectual resistance, shall, upon conviction, be punished with death. *Rev. Stat., chap. 44, div. 3, sec. 4.*

ABDUCTION.

SEC. 1574. Every person who shall take away any female under the age of fifteen years from her father, mother, guardian or other person having the legal charge of her person, without their consent, either for the purpose of prostitution or concubinage, shall, upon conviction, be fined in any sum not less than four hundred dollars, and be imprisoned not less than one year.

SEC. 1575. Every person who shall take, unlawfully and against her will, any woman, and, by force, duress or menace, compel her to marry him, or to marry any other person, or to be defiled, shall suffer death.

(n) See *Sulivant v. State*, 8—400; *Charles v. State*, 11—390; *Pleasant v. State*, 13—360. Force is an essential element in the crime of rape; it must be committed forcibly and against the will of the female upon whom it is committed. *Pat Bradley v. State*, 32—704.

It is not the persistence with which the party accused intended to prosecute his illegal design, but the force actually used, that is an element in the crime of rape. *Dawson v. State*, 29—116.

Rape may be committed on a female under the age of puberty, or one so young as not to be capable of giving her consent. *Ib.*

SEC. 1576. If any person shall unlawfully take any woman in the last preceding section, with intent to compel her to marry any other person, or to defile her, without accomplishing such offender shall, on conviction, be fined in any sum not less than one hundred dollars, and be imprisoned not less than one year. *Act Dec. 3, art. 4, secs. 5-7.*

SODOMY.

SEC. 1577. Every person convicted of sodomy, or buggery, shall be imprisoned in the penitentiary for a period not less than five nor more than twenty-one years. *Act Dec. 17, 1838, sec. 4.*

INCEST.

SEC. 1578. Persons marrying who are within the degrees of consanguinity within which marriages are declared by law to be incestuous, or who shall commit adultery or fornication with each other, shall be deemed guilty of incest. *Rev. Stat., chap. 44, div. 4, art. 7, sec. 5.*

SEC. 1579. Whoever shall be convicted of incest shall be imprisoned in the penitentiary for a period not less than three nor more than five years. *Act Dec. 17, 1838, sec. 4.*

IX.—BIGAMY.

SECTION

1580. Bigamy defined.

1581. exceptions.

1582. venue in, immaterial.

SECTION

1583. Bigamy, unmarried person, for.

1584. penalty for.

SECTION 1580. Every person having a wife or husband shall not marry any other person, whether married or single, except in the next section, shall be adjudged guilty of bigamy (o).

SEC. 1581. The last preceding section shall not extend to persons or cases:

First. To any person, by reason of any former marriage, whose wife or husband by such marriage shall have been absent for five successive years, being known to such person within that time to be living.

Second. To any person whose wife or husband has been absent from the United States for the space of five years.

(o) The offense of bigamy is barred by the lapse of three years from the date of the first marriage. *Scoggins v. State*, 32—205. See same case in regard to allegation as to time when committed. It is the marrying by a person who has a husband or wife living that constitutes bigamy under this section, and the offense is complete upon the second marriage. *Ib.*

An indictment for bigamy must be found in the county in which the bigamous marriage was committed. *r. State*, 32—565. Evidence that the first marriage was within the age of legal consent is also be shown that it was annulled by a court of competent jurisdiction. *Ib.*

If A marries B, and afterward, while B is alive, marries C, and afterward, while C is living, marries D, while C is living, this last marriage is not bigamous, the second being absolute. *State*, 34—511. A decree divorcing the accused rendered after the alleged bigamous marriage is no bar to a prosecution for bigamy. *State v. Ashley*, 37—40. Evidence that his wife was living at the time of such marriage. *State v. Ashley*, 37—40.

Third. To any person whose former marriage has been dissolved by a court of competent authority.

Fourth. To any person whose former marriage has been pronounced void by the decree or sentence of a court of competent authority, on the ground of the nullity of the marriage contract.

Fifth. To any person by reason of any former marriage contract by such person within the age of legal consent, and which has been annulled by a decree of a court of competent authority. *Rev. Stat., chap. 44, div. 4, art. 7, secs. 1, 2.*

SEC. 1582. An indictment may be found against a person for a second, third or other marriage herein prohibited in any county in which such person may be apprehended, and the like proceedings, trial, judgment and sentence may be had in such county as if the offense had been committed therein, the venue in such indictment being immaterial. *Ib., sec. 3.*

SEC. 1583. If any unmarried person shall knowingly marry the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, such person, on conviction, shall be subject to the same punishment as is prescribed in cases of bigamy. *Ib., sec. 4.*

SEC. 1584. Every person convicted of bigamy shall be imprisoned in the penitentiary for a period not less than three nor more than seven years. *Act Dec. 17, 1838, sec. 4.*

X.—ENTICING FEMALES TO HOUSES OF ILL-FAME— SEDUCTION—ILLEGAL COHABITATION.

SECTION

1585. Enticing female to house of ill-fame.

1586. Warrant to search for inveigled female.

SECTION

1587. Seduction by feigned marriage, etc.

1588. Illegal cohabitation, penalty.

SECTION 1585. Any person who shall inveigle or entice any female, of good moral character, to a house of ill-fame, or shall knowingly conceal or aid or abet in concealing any such female so deluded or enticed, for the purpose of prostitution or lewdness, shall, on conviction, be imprisoned not exceeding one year in the penitentiary, or fined in any sum not less than fifty dollars nor more than two thousand dollars.

SEC. 1586. When there is reason to believe that any female has been inveigled, deluded or enticed to a house of ill-fame, as aforesaid, upon complaint thereof being made under oath by the parent or guardian of any such female, or any other person in her behalf, to any justice of the peace or other officer authorized by law to issue warrants, he may issue his warrant to enter, by day or night, such house of ill-fame and to search for such female, and to bring her and the person in whose possession or keeping she may be found before such justice or other officer, who may, on examination, order her to be delivered to such parent or guardian, or discharged, as law and justice may require.

SEC. 1587. Any person who shall be convicted of obtaining the edge of any female by virtue of any feigned or pretended marriage, false or feigned express promise of marriage, shall, on conviction, be imprisoned not exceeding two years in the penitentiary and fined not exceeding five thousand dollars; but no person shall be convicted of this crime upon the testimony of the female, unless the same be corroborated by other evidence (p).

SEC. 1588. If any man and woman shall cohabit together as husband and wife without being married, each of them shall be deemed guilty of a misdemeanor, and shall, upon the first conviction, be fined in a sum not exceeding twenty dollars nor more than one hundred dollars; on a second conviction for said offense, the offender shall be fined not less than one hundred dollars and may be imprisoned in the county jail not exceeding twelve months; upon a third or any subsequent conviction, the offenders shall be imprisoned in the penitentiary for any time not less than one year nor more than three years (q). *Act April 12, 1869.*

XI.—CRIMINAL ABORTION.

SECTION

1589. Definition of; penalty for.

SECTION

1590. Penalty for advertising or procuring abortion.

SECTION 1589. It shall be unlawful for any one to administer any medicine or drugs to any woman with child, with intent to procure the miscarriage of the child, or to produce or attempt to produce such abortion by any other means. Any person offending against the provisions of this section shall be fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a term not less than one nor more than five years. *Provided*, that this section shall not apply to any abortion produced by any regular practicing physician for the purpose of saving the mother's life.

SEC. 1590. Every person who knowingly advertises, prints, publishes or knowingly causes to be advertised, printed, published or disseminated any pamphlet, printed paper, book, newspaper notice or reference containing any language giving or conveying any notice, hint or reference to the name of any person, real or fictitious, from whom or to a

(p) See *Cheaney v. State*, 36—74; *Polk v. State*, 40—482.

(q) Living or dwelling together in the same house is an essential element of the crime of cohabitation as husband and wife. *Sullivan v. State*, 32—187.

As to indictment for illegal cohabitation, see *Crouse v. State*, 16—566; *Hopper v. State*, 26—34; *State v. Burgett*, 22—323.

To constitute this offense it is not necessary that the parties claim to be husband and wife, or live together in the same house, in like manner as respects bed and board as marks the intercourse of husband and wife, they, in the sense and meaning of the statute, cohabit as husband and wife. *Bush v. State*, 37—215.

Sexual intercourse between persons not married, though living in the same house, does not constitute the offense. *Taylor v. State*, 36—34.

or shop or office where any poison, drug, mixture, preparation, medicine or noxious thing, whether medicinal, mechanical or otherwise, or any advice, information or knowledge, may be obtained for the purpose of causing miscarriage or abortion in the case of any woman pregnant with child, shall be punished by fine not less than one thousand dollars, and by imprisonment in the county jail not less than six nor more than twelve months. *Act Nov. 8, 1875.*

XII.—MAIMING AND ASSAULT WITH INTENT TO MAIM (*).

SECTION

1591. Maiming defined.

1592, 1593, 1594. acts constituting.

1595. punishment for.

SECTION

1596. Shooting with intent to kill or maim.

1597. Injury to third person.

1598. Penalty for assault with intent to maim.

SECTION 1591. Maiming consists in unlawfully disabling a human being by depriving him of the use of a limb, or member, or rendering him lame or defective in bodily vigor.

SEC. 1592. If any person shall, willfully and of his malice aforethought, cut or bite off the ear, cut out or in any manner disable the tongue, put out an eye, slit, cut or bite off the nose or lip of any person, he shall be adjudged guilty of maiming.

SEC. 1593. If any person shall, of his malice aforethought, cut off an arm or leg, or any finger or toe, of any person, or shall break the bone of any arm or bone of any part of the body of any person, so as to disable any such person, he shall be adjudged guilty of maiming.

SEC. 1594. If any person shall, from malice aforethought, shoot, stab, cut or in any manner wound and disable any person, he shall be deemed guilty of maiming. *Rev. Stat., chap. 44, div. 3, art. 3, secs. 1-4.*

SEC. 1595. Whoever shall be convicted of maiming shall be imprisoned in the penitentiary not less than one nor more than seven years. *Act Dec. 17, 1838, sec. 9.*

ATTEMPTS TO MAIM.

SEC. 1596. If any person shall shoot at any other person, with intent to kill or wound such person, although he may miss or fail to hit the person aimed at, he shall be deemed guilty of an attempt to kill or maim, and, on conviction, shall be fined not exceeding three thousand dollars and imprisoned not exceeding seven years (**). *Rev. Stat., chap. 44, div. 3, art. 3, sec. 5.*

SEC. 1597. If any person, of his malice, attempt to shoot or to do some bodily injury to some particular individual, and in attempting so to do shall shoot or injure some third person, against whom the offender had no evil design, he shall be held and adjudged to be guilty, in the same manner as if the injury had fallen on the person intended (r). *Ib., sec. 6.*

(*) If one be maimed in a fight by mutual agreement, it is not maiming. SEC. 1799.

(**) See *Baker v. State*, 4—56.

(r) This section has no application to assaults with intent to kill. It has relation to maiming or wounding, and prosecutions under it are for the maiming or bodily injury done, and not for the assault or attempt. *Lacefield v. State*, 34—275.

SEC. 1598. An assault with intent to maim shall subject the offender, on conviction thereof, to a fine not less than one hundred nor exceeding one thousand dollars, and to be imprisoned not exceeding one year. *Rev. Stat., chap. 44, div. 3, art. 5, sec. 2.*

XIII.—ROBBERY.

SECTION

1599. Robbery defined.

1600. punishment for.

SECTION

1601. Robbery, assault with intent to commit, penalty.

1602. by blackmail, penalty.

SECTION 1599. Robbery is the felonious and violent taking of any goods, money or other valuable thing from the person of another by force or intimidation; the manner of the force or the mode of intimidation is not material, further than it may show the intent of the offender (s). *Act April 12, 1869, sec. 1.*

SEC. 1600. Every person convicted of robbery shall be imprisoned in the penitentiary for a period not less than one nor more than fifteen years. *Ib., sec. 2.*

SEC. 1601. Whoever shall feloniously, willfully and with malice aforethought assault any person with intent to rob, and his counselors, aiders and abettors, shall, on conviction thereof, be imprisoned in the penitentiary not less than three nor more than twenty-one years (t). *Act Dec. 17, 1838, sec. 9.*

SEC. 1602. If any person shall willfully and maliciously send, or deliver, or make, or for the purpose of being delivered or sent shall part with the possession of any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, threatening therein to accuse any person of a crime, or to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any description belonging to another, he shall be deemed guilty of an attempt to rob, and, on conviction, shall be fined in any sum not less than one hundred dollars or imprisoned in the penitentiary for a period not less than one nor more than five years, or both. *Act April 12, 1869, sec. 3.*

(s) To constitute robbery, the taking must be either directly from the person or in the presence of the party robbed, and must be by force or a previous putting in fear. It is immaterial of what value the thing taken is. *Clary v. State*, 33—561. It is sufficient in an indictment for robbery to allege that the taking was done by violence, without alleging intimidation. *Ib.*

A violent taking of property in the presence of others, under claim of title, will not constitute the crime of robbery. *Brown v. State*, 28—126.

(t) When an indictment charges an assault with intent to rob one of a watch and money, proof of intent to rob either is sufficient. *Phillips v. State*, 36—282.

XIV.—KIDNAPING.

SECTION
1603, 1604. Kidnaping defined.

SECTION
1605. Kidnaping, punishment for.

SECTION 1603. Kidnaping is the unlawful and forcible abduction or stealing away a man, woman or child from his or her own country and sending or taking him or her into another.

SEC. 1604. Every person who shall unlawfully and forcibly steal, take or arrest any man, woman or child in this state and carry him or her into any other part of this state, or into any other state, country or territory, shall be deemed guilty of kidnaping. *Rev. Stat., chap. 44, div. 3, art 7, secs. 1, 2.*

SEC. 1605. Every person convicted of kidnaping shall be imprisoned in the penitentiary not less than three nor more than twenty-one years. *Act Dec. 17, 1838.*

XV.—FALSE IMPRISONMENT.

SECTION
1606. False imprisonment defined.

SECTION
1607. False imprisonment, punishment for.

SECTION 1606. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority (u).

SEC. 1607. Any person convicted of false imprisonment shall be fined in any sum not less than one hundred nor exceeding five hundred dollars, and there may be added thereto imprisonment not exceeding one year. *Rev. Stat., chap. 44, div. 3, art. 6, secs. 1, 2.*

XVI.—ARSON.

SECTION
1608. Arson defined.
1609, 1610, 1611. who deemed guilty of.
1612. burning boat, car, bridge, tank, etc., is.

SECTION
1613. Arson, punishment for.
1614. by convict in penitentiary.
1615. attempt to commit, punishment.

SECTION 1608. Arson is the willful and malicious burning the house or other tenements of another person (v).

SEC. 1609. Every person who shall willfully and maliciously burn, or cause to be burned, any dwelling-house or other house, although not herein specially named, shall be guilty of arson.

(u) See *Vanderpool v. State*, 34—174.

(v) It is not necessary to constitute arson that any part of the house should be wholly consumed. *Mary v. State*, 24—44.

SEC. 1610. If any person shall willfully and maliciously burn, or cause to be burned, any state-house, court-house, prison, church, bridge, or any other public building, although not herein specially named, such person, on conviction, shall be adjudged guilty of arson (w).

SEC. 1611. If any person shall willfully set fire to his own buildings or other property with the intent to burn the property of any other person, and the property or building of any other person shall thereby be burned, such person shall be deemed guilty of arson.

SEC. 1612. If any person shall willfully and maliciously burn, or cause to be burned, any railway locomotive, engine, car, water-tank, bridge, trestle or other railroad rolling stock or superstructure, or any steamboat or other vessel, or any water craft whatever, whether there be any person or goods on board or not, he shall be deemed guilty of arson. *Rev. Stat., chap. 44, div. 4, art. 1, secs. 1-5, and act Dec. 15, 1874.*

SEC. 1613. Every person convicted of arson shall be imprisoned in the penitentiary for a period not less than two nor more than ten years. *Act Dec. 17, 1838, sec. 4.*

SEC. 1614. Any convict who shall willfully and maliciously burn, or cause to be burned, or attempt to burn, the penitentiary or any of the buildings therewith connected shall be deemed guilty of arson, and on conviction shall suffer death; and, on the trial of such convict for such arson, any convict in said penitentiary shall be a competent witness. *Act Jan. 31, 1867, sec. 7.*

SEC. 1615. If any person shall set fire to any building or tenement of another with intent to burn the same, although such house or tenement may not be burned, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars and be imprisoned not less than six months (x). *Rev. Stat., chap. 44, div. 4, art. 1, sec. 7.*

XVII.—BURGLARY.

SECTION

1616, 1617. Burglary defined.

1618, 1619. who deemed guilty of.

1620. punishment for.

SECTION

1621. Burglary and larceny may be joined in same indictment.

SECTION 1616. Burglary is the unlawful entering a house, tenement, railway car, or other building, boat, vessel or water craft, in the night time, with the intent to commit a felony.

SEC. 1617. The manner of breaking or entering is not material, further than it may show the intent of the offender.

SEC. 1618. If any person shall, in the night time, willfully and maliciously, and with force, break or enter any house, tenement, boat, or other vessel or building, although not specially named herein, with the intent to commit any felony whatever, he shall be deemed guilty of burglary.

(w) No allegation of ownership is necessary in an indictment for arson of a public building. *Mott v. State*, 29—147.

(x) See *Mary v. State*, 24—44.

SEC. 1619. If any person shall, in the night time, willfully, and with or without force, break or enter any house, tenement, boat or the like, with the intent to commit a felony, and shall then and there commit a felony or larceny, he shall be adjudged guilty of burglary, and also of felony or larceny, as the case may be. *Rev. Stat., chap. 44, div. 4, art. 2, secs. 1-3, and act Dec. 24, 1874.*

SEC. 1620. Whoever shall be convicted of burglary shall be imprisoned in the penitentiary for a period not less than three nor more than seven years. *Act Dec. 17, 1838, sec. 4.*

SEC. 1621. For larceny committed jointly with burglary the offender shall be held to restitution, as in other cases of larceny, and the offender may be indicted for such offenses, either separately or jointly in different counts of the same indictment (y). *Rev. Stat., chap. 44, div. 4, art. 2, sec. 5.*

XVIII.—LARCENY AND EMBEZZLEMENT.

SECTION

1622. Larceny defined.
 1623. what embraced therein.
 1624. of bank bills, notes, etc.
 1625. of same, measure of value of.
 1626. though owner not in possession.
 1627. punishment for.
 1628. of cattle, hogs, etc., punishment.
 1629. of horse, etc., punishment.
 1630. Receiving or buying stolen horses.
 1631. Receiving stolen goods, punishment.
 1632. Stealing or taking by robbery bank bill, etc.
 1633. Buying or receiving property obtained by larceny or robbery.

SECTION

1634. Receiver of stolen goods; time of trial.
 1635. Assaults with intent to commit larceny.

EMBEZZLEMENT.

1636. Embezzlement, by tenant or lodger.
 1637. by officer, of records, etc.
 1638, 1639. by clerks, apprentices, etc.
 1640, 1641. by carrier, etc.; who deemed such.
 1642. by executors, administrators and guardians.
 1643. by officers, of public funds.
 1644. by road overseers.

SECTION 1622. Larceny is the felonious stealing, taking and carrying, riding or driving away the personal property of another (z).

SEC. 1623. Larceny shall embrace every theft which unlawfully deprives another of his money or other personal property, or those means and muniments by which the right and title to property, real or personal, may be ascertained.

(y) See SEC. 2109. If one feloniously enters a house in the night time with intent to steal, he is guilty of burglary, though he does not accomplish the theft. If he completes the theft, he is guilty of a further offense, and may be indicted and punished for both burglary and larceny; and he may be charged with the two offenses separately, or jointly in different counts in the same indictment. *Dodd v. State*, 33—517. See *Toliver v. State*, 35—385; *Watkins v. State*, 37—370.

(z) It is not necessary to trace the stolen goods to defendant's possession. If he was present aiding and abetting in the larceny, he is guilty. *Lester v. State*, 32—727.

A felonious intent is an essential constituent of larceny, and must be shown by circumstances connected with the taking. *Mason v. State*, *Id.*, 238. It must exist at the time of the taking. *Fulton v. State*, 13—168.

Trees previously severed from the soil are personal property, and when furtively taken from the land or possession, actual or constructive, of another, it is larceny. *State v. Parker*, 34—158.

If one at the time of taking property is so under the influence of intoxicating liquor that a felonious intent can not be formed in his mind, he is not guilty of larceny. *Wood v. State*, 34—341.

Possession of property recently stolen, unexplained, is evidence of guilt to go to a jury for their consideration, but it is not such evidence as must compel the jury to convict unless it be rebutted. *Boykin v. State*, *Id.*, 443.

When one takes another's horse without any intention of converting it to his own use, but to ride for some miles, which he does, and then abandons it, it is a trespass, but not larceny. *Dove v. State*, 37—261.

A reclaimed and tamed mocking bird is a subject of larceny. *Haywood v. State*, 41—479.

As to indictment for larceny, see *State v. Parker*, 34—158; *State v. McMinn*, *Id.*, 160; *Perry v. State*, 37—54.

SEC. 1610. If any person shall willfully and maliciously burn, or cause to be burned, any state-house, court-house, prison, church, bridge, or any other public building, although not herein specially named, such person, on conviction, shall be adjudged guilty of arson (w).

SEC. 1611. If any person shall willfully set fire to his own buildings or other property with the intent to burn the property of any other person, and the property or building of any other person shall thereby be burned, such person shall be deemed guilty of arson.

SEC. 1612. If any person shall willfully and maliciously burn, or cause to be burned, any railway locomotive, engine, car, water-tank, bridge, trestle or other railroad rolling stock or superstructure, or any steamboat or other vessel, or any water craft whatever, whether there be any person or goods on board or not, he shall be deemed guilty of arson. *Rev. Stat., chap. 44, div. 4, art. 1, secs. 1-5, and act Dec. 15, 1874.*

SEC. 1613. Every person convicted of arson shall be imprisoned in the penitentiary for a period not less than two nor more than ten years. *Act Dec. 17, 1838, sec. 4.*

SEC. 1614. Any convict who shall willfully and maliciously burn, or cause to be burned, or attempt to burn, the penitentiary or any of the buildings therewith connected shall be deemed guilty of arson, and on conviction shall suffer death; and, on the trial of such convict for such arson, any convict in said penitentiary shall be a competent witness. *Act Jan. 31, 1867, sec. 7.*

SEC. 1615. If any person shall set fire to any building or tenement of another with intent to burn the same, although such house or tenement may not be burned, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars and be imprisoned not less than six months (x). *Rev. Stat., chap. 44, div. 4, art. 1, sec. 7.*

XVII. — BURGLARY.

SECTION

1616, 1617. Burglary defined.

1618, 1619. who deemed guilty of.

1620. punishment for.

SECTION

1621. Burglary and larceny may be joined in same indictment.

SECTION 1616. Burglary is the unlawful entering a house, tenement, railway car, or other building, boat, vessel or water craft, in the night time, with the intent to commit a felony.

SEC. 1617. The manner of breaking or entering is not material, further than it may show the intent of the offender.

SEC. 1618. If any person shall, in the night time, willfully and maliciously, and with force, break or enter any house, tenement, boat, or other vessel or building, although not specially named herein, with the intent to commit any felony whatever, he shall be deemed guilty of burglary.

(w) No allegation of ownership is necessary in an indictment for arson of a public building. *Mott v. State*, 29—147.

(x) See *Mary v. State*, 24—44.

SEC. 1619. If any person shall, in the night time, willfully, and with or without force, break or enter any house, tenement, boat or the like, with the intent to commit a felony, and shall then and there commit a felony or larceny, he shall be adjudged guilty of burglary, and also of felony or larceny, as the case may be. *Rev. Stat., chap. 44, div. 4, art. 2, secs. 1-3, and act Dec. 24, 1874.*

SEC. 1620. Whoever shall be convicted of burglary shall be imprisoned in the penitentiary for a period not less than three nor more than seven years. *Act Dec. 17, 1838, sec. 4.*

SEC. 1621. For larceny committed jointly with burglary the offender shall be held to restitution, as in other cases of larceny, and the offender may be indicted for such offenses, either separately or jointly in different counts of the same indictment (y). *Rev. Stat., chap. 44, div. 4, art. 2, sec. 5.*

XVIII.—LARCENY AND EMBEZZLEMENT.

SECTION

1622. Larceny defined.
 1623. what embraced therein.
 1624. of bank bills, notes, etc.
 1625. of same, measure of value of.
 1626. though owner not in possession.
 1627. punishment for.
 1628. of cattle, hogs, etc., punishment.
 1629. of horse, etc., punishment.
 1630. Receiving or buying stolen horses.
 1631. Receiving stolen goods, punishment.
 1632. Stealing or taking by robbery bank bill, etc.
 1633. Buying or receiving property obtained by larceny or robbery.

SECTION

1634. Receiver of stolen goods; time of trial.
 1635. Assaults with intent to commit larceny.

EMBEZZLEMENT.

1636. Embezzlement, by tenant or lodger.
 1637. by officer, of records, etc.
 1638, 1639. by clerks, apprentices, etc.
 1640, 1641. by carrier, etc.; who deemed such.
 1642. by executors, administrators and guardians.
 1643. by officers, of public funds.
 1644. by road overseers.

SECTION 1622. Larceny is the felonious stealing, taking and carrying, riding or driving away the personal property of another (z).

SEC. 1623. Larceny shall embrace every theft which unlawfully deprives another of his money or other personal property, or those means and muniments by which the right and title to property, real or personal, may be ascertained.

(y) See SEC. 2109. If one feloniously enters a house in the night time with intent to steal, he is guilty of burglary, though he does not accomplish the theft. If he completes the theft, he is guilty of a further offense, and may be indicted and punished for both burglary and larceny; and he may be charged with the two offenses separately, or jointly in different counts in the same indictment. *Dodd v. State, 33—517. See Toliver v. State, 35—395; Watkins v. State, 37—370.*

(z) It is not necessary to trace the stolen goods to defendant's possession. If he was present aiding and abetting in the larceny, he is guilty. *Lester v. State, 32—727.*

A felonious intent is an essential constituent of larceny, and must be shown by circumstances connected with the taking. *Mason v. State, Ib., 238.* It must exist at the time of the taking. *Fulton v. State, 13—168.*

Trees previously severed from the soil are personal property, and when furtively taken from the land or possession, actual or constructive, of another, it is larceny. *State v. Parker 34—158.*

If one at the time of taking property is so under the influence of intoxicating liquor that a felonious intent can not be formed in his mind, he is not guilty of larceny. *Wood v. State, 34—341.*

Possession of property recently stolen, unexplained, is evidence of guilt to go to a jury for their consideration, but it is not such evidence as must compel the jury to convict unless it be rebutted. *Boykin v. State, Ib., 443.*

When one takes another's horse without any intention of converting it to his own use, but to ride for some miles, which he does, and then abandons it, it is a trespass, but not larceny. *Dove v. State, 37—261.*

A reclaimed and tamed mocking bird is a subject of larceny. *Haywood v. State, 41—479.*

As to indictment for larceny, see *State v. Parker, 34—158; State v. McMinn, Ib., 160; Perry v. State, 37—54.*

SEC. 1624. The felonious taking and carrying away from the possession, actual or constructive, or custody of another, any bank note, bond, bill, note, receipt or any instrument of writing whatever, although not herein specified or named, of value to the owner, shall be deemed larceny.

SEC. 1625. If the property stolen consist of any bank note, bond, bill, covenant, bill of exchange, draft, order or receipt, or any evidence of debt whatever, of any public security issued by the United States, or any scrip or other public security issued by this state or any other state or territory, or of any instrument whereby any demand, right or obligation shall be assigned, transferred, created, increased, released, extinguished or diminished, the money due thereon or secured thereby and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be adjudged the value of the article stolen.

SEC. 1626. The taking and removing away any goods or personal chattel of any kind whatever, with intent to steal the same, whether the article stolen be in the immediate possession of the owner or not, unless it shall appear that the owner has abandoned his claim thereto, shall be deemed larceny. *Rev. Stat., chap. 44, div. 4, art. 4, secs. 1-5.*

SEC. 1627. Whoever shall be guilty of larceny, when the value of the property stolen exceeds the sum of ten dollars, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years. And when the value of the property stolen does not exceed the sum of ten dollars, by imprisonment in the county prison not more than one year, and shall be fined in any sum not less than ten nor more than three hundred dollars (*). *Act Dec. 17, 1838, sec. 4, and act of July 21, 1868, as amended by acts of Jan. 23, 1875, and March 22, 1881.*

SEC. 1628. Every person who shall mark, steal or kill, or wound, with intent to steal, any kind of cattle, pigs, hogs, sheep or goats, shall be guilty of a felony, and, upon conviction thereof, be imprisoned at hard labor in the penitentiary for any time not less than one year nor more than five years. *Act Feb. 12, 1883.*

SEC. 1629. Whoever shall be convicted of stealing any horse, mare, gelding, filly, foal, mule, ass or jenny shall be imprisoned in the penitentiary not less than five nor more than fifteen years.

SEC. 1630. Every person who shall be convicted of receiving or buying any horse or other animal named in the section last preceding, knowing the same to be stolen, with intent to deprive the true owner thereof, shall be imprisoned in the penitentiary not less than five nor more than fifteen years. *Act Dec. 17, 1838, sec. 4.*

SEC. 1631. Whoever shall receive or buy any stolen goods, moneys or chattels, knowing them to be stolen, with intent to deprive the true owner thereof, shall, upon conviction, be punished as is, or may be, by law prescribed for the larceny of such goods or chattels in cases of larceny. *Ib., as amended by act Feb. 20, 1883.*

SEC. 1632. Whoever shall steal or take by robbery any bank bill, bill of exchange, writing obligatory, or note or other valuable written paper, shall be imprisoned in the penitentiary not less than one nor more than five years;

(*) See *Southworth v. State*, 42—270.

and whoever shall fraudulently receive any such bank bill, bill of exchange, writing obligatory, note or other valuable written paper, knowing the same to be stolen, with intent to deprive the proper owner thereof, shall suffer the same punishment as if they had stolen the same. *Act. Dec. 17, 1838, sec. 4.*

SEC. 1633. Every person who shall, for his own gain, or to prevent the owner from again possessing his property, buy or receive any property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished as in cases of larceny. *Rev. Stat., chap. 44, div. 4, art. 6, sec. 1.*

SEC. 1634. Any person charged with receiving stolen goods may be tried, convicted and punished as well before as after the arrest or conviction of the principal. *Ib., sec. 2.*

SEC. 1635. An assault with intent to commit larceny shall subject the offender, on conviction thereof, to a fine not less than one hundred nor exceeding one thousand dollars, and to be imprisoned not exceeding one year. *Rev. Stat., chap. 44, div. 3, art. 5, sec. 2.*

EMBEZZLEMENT (*).

SEC. 1636. If any tenant or lodger shall take away, with intent to steal, embezzle or purloin any bedding, furniture, goods or chattels, or any fixture of any tenement, which by contract was let to him, to be used by him, in or with any house, or apartment, or room, or lodging, whether the contract for letting shall have been made by such person, or by any other person on his behalf, he shall be adjudged guilty of larceny, and on conviction shall be punished as in other cases of larceny.

SEC. 1637. If any officer or other person having the legal custody of any record, paper, document or proceeding, which by the law he is required to preserve for the use of the persons concerned therein, shall fraudulently take away, withdraw or destroy any such record, document, proceeding, paper or instrument in writing, filed or deposited with him, or left in his custody, he shall be deemed guilty of larceny and punished in like manner (**).

SEC. 1638. If any clerk, apprentice or servant of any private person, or of any copartnership, except clerks, apprentices and servants within the age of sixteen years, or any officer, agent, clerk or servant of any incorporated company, or any person employed in any such capacity, shall embezzle or convert to his own use, or shall take, make way with, or secrete with intent to embezzle or convert to his own use, without the consent of his master or employer, any money, goods or rights in action, or any valuable security or effects whatsoever belonging to any other person, which shall have come to his possession, or under his care or custody, by virtue of such employment or office, he shall be deemed guilty of larceny, and on conviction shall be punished as in cases of larceny (aa).

SEC. 1639. Every embezzlement of any evidence of debt, negotiable by delivery, duly and actually executed by the master or employer of such clerk,

(*) The crimes of larceny and embezzlement are wholly separate and distinct, and the same evidence will not support an indictment for both offenses. *Fulton v. State*, 13—168.

(**) See SEC. 1719.

(aa) See *Powell v. State*, 34—693.

agent, officer or servant, but not issued or delivered as a valid instrument, shall be deemed an offense within the meaning of the last preceding section, and shall be punished in like manner.

SEC. 1640. If any carrier or other bailee shall embezzle, or convert to his own use, or make way with, or secrete with intent to embezzle, or convert to his own use, any money, goods, rights in action, property, effects or valuable security, which shall have come to his possession, or have been delivered to him, or placed under his care or custody, such bailee, although he shall not break any trunk, package, box or other thing in which he received them, shall be deemed guilty of larceny, and on conviction shall be punished as in cases of larceny.

SEC. 1641. Masters and clerks, or supercargoes of steamboats, and other vessels navigating the waters within this state, shall be deemed bailees and public carriers within the meaning of this act. *Rev. Stat., chap. 44, div. 4, art. 10.*

SEC. 1642. Every executor, administrator or guardian who shall embezzle, or fraudulently convert to his own use, or make way with or secrete with intent to embezzle or fraudulently convert to his own use, any money, goods, rights in action, property, effects or valuable security of his testator, intestate or ward, shall be deemed guilty of larceny, and on conviction shall be punished as in cases of larceny. *Act March 14, 1879.*

SEC. 1643. Every officer of the state, county, city, incorporated town or township, who has taken an oath of office, as required by law, employed in the collection of the public revenue, or who may have any public funds in his hands, who shall convert the same to his own use, or use it in any way for his private purpose, or shall loan, or permit any other person to use, or otherwise misapply any part of the money or funds so collected by him, or which may have come into his possession by virtue of his employment, and every such officer who shall fail or omit to pay the amount found due by him on settlement, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary not less than five nor more than twenty-one years (bb).

SEC. 1644. Any road overseer who shall fail to pay over to the proper officer any money collected by him as such, or who shall fail or refuse to duly account for the same, shall be guilty of a felony, and be punished as prescribed in the preceding section (*). *Act Feb. 20, 1883.*

XIX.—FALSE PRETENSES AND FRAUDS.

SECTION

- 1645. Obtaining property by, larceny.
- 1646. by fictitious token.
- 1647. If larceny, not ground for acquittal.
- 1648. False personation.

SECTION

- 1649. Fraudulent conveyance of property.
- 1650. of real estate.
- 1651. Vendor liable for double damages.

SECTION 1645. Every person who, with intent to defraud or cheat another, shall designedly, by color of any false token or writing, or by any other false

(bb) See *State v. Hunnicut*, 34—562.

(*) See SECS. 5920, 5954.

pretense (cc), obtain a signature of any person to any written instrument, or obtain from any person any money, personal property, right in action, or other valuable thing or effects whatever, upon conviction thereof shall be deemed guilty of larceny and punished accordingly.

SEC. 1646. If any false token, by which any money, signature, property, right in action or other valuable thing shall be obtained, as specified in the last preceding section, be a promissory note, bill of exchange, check or evidence of debt, purporting to have been made or issued by or under the authority of any banking company or corporation not in existence, the person convicted of such cheat shall be punished as in case of larceny.

SEC. 1647. If, upon the trial of any person indicted for any offense prohibited in the two last preceding sections, it shall be proved that he obtained the property or thing in question in such manner as to amount to larceny, he shall not, by reason thereof, be entitled to an acquittal, but he shall be convicted and punished as if the offense had been proved as charged.

SEC. 1648. Every person who shall falsely represent or personate another, and in such assumed character shall receive any goods, chose in action, or property or effects of any description, belonging or intended to be delivered to the individual so personated, he shall be deemed guilty of larceny, and upon conviction shall be punished as for larceny (dd).

SEC. 1649. Every person who shall be a party to any conveyance or assignment of any real estate, or interest in any real estate, goods or chose in action, or any rents or profits issuing therefrom, or to any charge upon such estate, with intent to defraud any prior or subsequent purchaser, or to hinder, delay or defraud creditors or other persons, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than five hundred dollars.

SEC. 1650. If any person shall *bona fide* sell any tract or parcel of land, and shall make any written deed, conveyance, bond, or other instrument in writing, assuring the title of such land to the purchaser thereof, and shall afterward sell and convey such tract of land to any subsequent purchaser, whether the subsequent purchaser have knowledge of the previous sale or not, such person shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than twice the value of the land so sold.

SEC. 1651. Any person who shall violate any of the provisions of the two last preceding sections shall, in addition to the fine to be assessed in the criminal prosecution, pay to every person so by him injured or defrauded, by any of the means therein mentioned, double the damages sustained by him, to be recovered by proper action. *Rev. Stat., chap. 44, div. 4, art. 11.*

(cc) The word "pretense," as here used, has a legal and technical meaning. *McKenzie v. State*, 11—594. False pretenses, within the meaning of the statute, must be of some existing fact, and not of future transactions. *Burrow v. State*, 12—65.

A false pretense is such a fraudulent representation of an existing or past fact, by one who knows it to be false, as is adapted to induce the person to whom it is made to part with something of value. *State v. Vandemark*, 35—396.

It is not necessary that the false pretense should be such as is calculated to deceive a person of ordinary prudence or caution. It is as criminal to defraud the unwary as the wary. *Johnson v. State*, 36—242.

Proof that defendant by false pretenses obtained the satisfaction of his debt to another is not sufficient to sustain an indictment for obtaining money under such pretenses. *Jamison v. State*, 37—445. See *Morgan v. State*, 42—131.

(dd) The allegation of false personation in an indictment under this section is descriptive of the offense, and must be proved as alleged. *Kirtley v. State*, 38—543.

XX.—MALICIOUS MISCHIEF, AND TRESPASS AND INJURY TO PROPERTY.

SECTION

1652. Marking or altering mark or brand of animals.
 1653. Administering poison to stock.
 1654. Malicious killing or wounding stock.
 1655. Unmarked stock, taking not larceny, when.
 1656. Injury to telegraph line.
 1657. Severing article from the soil.
 1658, 1659, 1660, 1661, 1662, 1663. Destroying or taking timber, etc.
 1664. Cutting timber within five miles of Little Rock.
 1665. Burning or destroying fences and other improvements.
 1666. Injury to wood, lumber, boats, etc.
 1667. to bridge, mill-dam or levee.
 1668. Taking cord-wood without paying price.
 1669, 1670, 1671, 1672, 1673, 1674. Trespass on inclosures, etc.

SECTION

1675, 1676. Injury to and avoiding tolls on turn-pike.
 1677. Poisoning lakes or streams, penalty.
 1678. Removing or destroying landmarks.
 1679. Defacing or damaging state-house, etc.
 1680. Duty of state officers to prosecute.
 1681. Parent or guardian responsible for acts of minor.
 1682. Does not acquit from liability for damage.
 1683. Trespass on swamp land, punishment.
 1684. on school land, defined.
 1685. penalty for, exceptions.
 1686. by apprentice, master liable for.
 1687. other penalty for.
 1688. Making cut-off on Mississippi River.
 1689. Malicious injury to grave, monument, etc.

SECTION 1652. If any person shall mark, brand or alter the mark or brand of any animal, the subject of larceny, being the property of another, with an intent to steal or convert the carcass or skin of any such animal to his own use, or to prevent identification thereof by the true owner, he shall, on conviction, be punished in the manner prescribed by law for feloniously stealing property of the value of such animals.

SEC. 1653. Every person who shall knowingly administer any poison to any horse, ass, mule or to any cattle, hog, sheep, goat or dog, or maliciously expose any poisonous substance with intent that the same shall be taken or swallowed by any of the aforesaid animals, shall, on conviction, be punished in the manner prescribed by law for feloniously stealing property of the value of the animal so poisoned; and the jury who shall try such case shall assess the amount of damages, if any actual damage has occurred, occasioned by such poisoning or intent to poison, and the court shall render judgment in favor of the party injured for threefold the amount so assessed by the jury. *Act April 12, 1869, secs. 1, 2.*

SEC. 1654. If any person shall willfully and maliciously, by any means whatsoever, kill, maim or wound any animal of another which it is made larceny to steal, he shall, on conviction, be punished by a fine of not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than ten nor more than sixty days, or by both such fine and imprisonment, and shall, moreover, be liable to damages to the owner of the animal so killed, maimed or wounded, as in the preceding section provided (ee). *Provided*, that nothing in this section shall be so construed as to extend to any person who shall kill, maim or wound any animal trespassing in the fields or grounds of such person which are inclosed with a lawful fence, as defined in sections 3646, 3647, 3648 and 3649 (ff). *Ib.*, sec. 3, as amended by *act March 17, 1879.*

(ee) Malice toward the owner of the animal is essential to constitute this offense. *Chappell v. State*, 35—345. As to measure of damages, see *Lemon v. State*, 19—171.

(ff) An indictment for killing a mule need not allege that it was killed in an inclosure having an insufficient fence. If killed while trespassing in the defendant's inclosure, having a lawful fence, he can prove it in defense. *Dean v. State*, 37—37.

SEC. 1655. Owners of cattle, hogs or sheep which run at large in the range or woods shall designate such animals, if over twelve months old, by brands or ear-marks; otherwise, if taken or converted to the use of any other person, such person shall not be deemed guilty of larceny, but the owner may have his action for the value of such unmarked or unbranded animal (*). *Rev. Stat., chap. 44, div. 4, art. 8, sec. 4.*

SEC. 1656. Any person who shall willfully and intentionally destroy, injure or obstruct any telegraph line, or any of the materials thereof, shall, on conviction thereof, be fined in a sum not less than two hundred dollars and imprisoned for not less than six months, and pay the owners of said line all the damages sustained thereby. *Act Jan. 21, 1861.*

SEC. 1657. If any person shall sever from the soil of another any vegetable or produce growing thereon of the value of one dollar or more, or shall sever from any building or frame, any gate or fence, or other railing or inclosure, or any part thereof, or any material of which it is composed of like value, and shall take and carry away, or convert the same to his own use, with intent to steal the same, he shall be adjudged guilty of larceny in the same manner as if the article so taken had been severed at some different and previous time.

SEC. 1658. Every person who shall willfully commit any trespass by cutting down or destroying any kind of wood or timber, standing or growing upon the lands of any other person, or carry away any kind of wood or timber that may have been cut down, and that may be lying on such land (†); or shall maliciously cut down, lop, girdle or otherwise injure any fruit, ornamental or shade tree, or maliciously sever from the freehold any produce thereof, or any thing attached thereto, shall, upon conviction, be adjudged guilty of a misdemeanor, and be fined in any sum not less than fifty dollars. *Rev. Stat., chap 44, div. 4, art. 9, secs. 1, 2.*

SEC. 1659. Any person who shall, without lawful authority, willfully and knowingly enter upon any lands belonging to this state, or any lands belonging to any corporation or person, and shall cut down or destroy, or cause to be cut down or destroyed, any tree or trees standing or growing thereon, of the value of more than ten dollars, or any person who shall induce, assist, aid or abet any other person so to do, shall be deemed guilty of a felony, and shall, upon conviction, be punished by imprisonment at hard labor in the state penitentiary not more than two years.

SEC. 1660. Any person who shall take and carry away any trees or parts thereof, or any logs, timber, lumber, staves or shingles cut from such lands, with intent to convert the same to his own use, or the use of his employer or principal, of the value of more than ten dollars, shall be deemed guilty of felony, and shall be punished as provided in section 1659.

SEC. 1661. If the owner of any saw-mill, stave-mill or shingle-mill, or any person operating such mill, or if any person as agent of any person owning or operating any such mill, or if any person as officer or agent of any corporation owning or operating any such mill, or if any other person shall, by himself, his agent or servant, knowingly receive or purchase any trees, logs or timber, knowing the same to have been cut contrary to the provisions of this act, for

(*) See *Matthews v. State*, 24—484; *Perry v. State*, 37—54.

(†) Query: As to repeal of this clause by implication, see SECS. 1659, 1660, 1662.

the purpose of sawing or manufacturing the same into lumber, staves or shingles, or for the purpose of selling the same, of the value of more than ten dollars, he shall be deemed guilty of a felony, and shall, upon conviction, be punished as provided in section 1659.

SEC. 1662. If the trees so cut down or destroyed, or if the parts of trees, timber, lumber, staves or shingles made therefrom so taken and carried away, or so sawed at any saw-mill, shall not exceed in value the sum of ten dollars, the person so offending shall be deemed guilty of petit larceny, and shall be punished accordingly.

SEC. 1663. In any indictment under this act, the person accused may be charged with commencing at some particular time to commit any of the acts hereby made punishable, and of continuing to commit the same at divers times and on divers days between that day and some other day to be therein stated. It shall not be necessary, in order to convict, to prove title to the lands upon or from which it is alleged the trees, timber, lumber, staves or shingles were cut or carried away as alleged in the indictment, but it shall be sufficient to prove title, legal, equitable or colorable, in the State of Arkansas (*), or any corporation or any person or persons other than the accused; and it shall not be necessary to allege in the indictment or prove on the trial the kind of trees, timber, lumber, staves or shingles cut, destroyed or carried away; but, in case the accused be found guilty, the value of the timber so cut down, destroyed, sawed or carried away shall be stated in the finding or verdict. *Act March 17, 1883.*

SEC. 1664. Every person who shall cut and carry away any timber on any lands within five miles of Little Rock, on the south side of the Arkansas River, without permission or license from the owner or legal possessor of such lands, upon conviction thereof, shall be fined in a sum not less than fifty nor more than three hundred dollars, and be imprisoned not less than one nor more than three months; and the owner of such lands shall also be entitled to sue and recover damages, according to the laws heretofore existing. *Act Dec. 16, 1838.*

SEC. 1665. If any person shall willfully or maliciously burn or otherwise destroy any rail or plank fence, or other inclosure, or any cotton or corn pen, fodder, hay, wheat or oat stack, or any other valuable improvements, less than a tenement, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars or sentenced to hard labor in the state penitentiary for a term not less than twelve months, or both, at the discretion of the court. *Act Feb. 3, 1875.*

SEC. 1666. If any person shall willfully and maliciously burn, injure or destroy any pile or raft of wood, plank, boards or other lumber, or any part thereof, or cut loose or set adrift any such raft or part thereof, or shall cut loose, break, injure, sink or set adrift any canoe, skiff, boat or vessel, being the property of another, he shall be adjudged guilty of a misdemeanor, and, on conviction, shall be punished as in cases of larceny.

SEC. 1667. Every person who shall willfully and maliciously cut down, break, injure or destroy any bridge, or mill-dam, or other dam, or levee, erected or constructed to create hydraulic power or to prevent the overflow of lands, or any embankment necessary to support such dam or levee, or shall make, or

(*) The certificate of the secretary of state that a tract of land belongs or is mortgaged to the state, or that the state has an interest therein, is presumptive evidence of the fact so stated. See SEC. 3878.

cause to be made, any aperture in such dam or embankment with intent to destroy or injure the same, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding five thousand dollars. *Rev. Stat., chap. 44, div. 4, art. 9, secs. 3, 4.*

SEC. 1668. If any owner, master, clerk, or any other person having charge or belonging to any boat, vessel or raft, shall take any cord-wood or any other species of property from the owner or his agent without paying the customary price for the same at the time, he shall be deemed guilty of a misdemeanor, and shall be fined for every such offense not less than fifty dollars nor more than two hundred, one-half to be paid to the person injured and the other half to the county. *Ib., sec. 6.*

SEC. 1669. If any person shall ride, range or hunt in the inclosed grounds of another without the consent of the owner previously obtained, or shall pull down or break the fence (*), or leave open the gate of the farm, plantation or other inclosed ground of another, the party so offending shall be guilty of a misdemeanor, and upon conviction thereof, before a justice of the peace, or other court having jurisdiction of such offense, shall be fined in any sum not less than ten dollars nor more than one hundred dollars, and, in default of the payment of such fine, shall be imprisoned in the county jail not less than ten nor more than thirty days. *Act Jan. 21, 1875.*

SEC. 1670. Any person who shall willfully, directly or indirectly, turn loose any horse, mule, hog, sheep, goat or neat cattle, or any other animal, or so allow any such animals to be turned loose in any inclosure where crops of any kind are growing or have been cultivated and not gathered, without the consent of all persons, or their agents, owning and cultivating such crops, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars nor more than one hundred dollars, this act not to be enforced for such trespass occurring after the close of the year in which the crop has been grown.

SEC. 1671. Willfully to leave open gates or gaps in fences in such manner that such animals will or can enter such cultivated land, when the crop is not gathered and in the year in which the crop is grown, shall be a violation of this act and be punished as provided in section 1670.

SEC. 1672. Where different owners or their tenants have cultivated under a common inclosure, one or more years, and any one owning only a part of the land desires to avoid the penalties of this act, and will put up half of a division fence by the first day of March in any year, and give notice in writing before the first day of January preceding the first of March to the owner of the rest of the field, notifying him to put up the rest of the division fence, and the owner so notified fails to inclose his land by putting up the rest of the division fence, or a fence entirely his own, before the first of April following such notice, the person giving the notice shall not be liable to the penalties herein provided for trespass that may occur on the land of the owner so notified.

SEC. 1673. Where division fences are put up under the provisions of this act, or have existed for one year or more by common consent of adjacent own-

(*) It is not a misdemeanor for one to break a partition fence between his lot and the lot of another, the common property of both. *Drees v. State*, 37—122.

ers of land, no one shall break or remove the same, or any part thereof, without giving at least nine months' notice of the intention to do so to the owner or agent of the adjoining land inclosed by such fence, and if done without such notice, the offender shall be punished as provided in section 1670.

SEC. 1674. It is not the purpose of this act to repeal or modify any law of inclosure now existing, nor the remedies therein, nor to affect or repeal any animal statute or law whatever, nor the penalties therein. *Act Feb. 20, 1883.*

SEC. 1675. Every person who shall willfully break, cut down, deface or injure any mile-stone or post on any turnpike road, or willfully break or throw down any gate or turnpike on any such road, or any thing thereunto belonging, or forcibly or fraudulently pass any gate thereon without having paid the legal toll, for each of such offenses the person thus offending shall forfeit and pay the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act, one-half of the fine aforesaid to go to the benefit of the county, and the other half to the benefit of the corporation thus injured.

SEC. 1676. Every person who, in order to avoid the payment of legal toll, shall, with his team, carriage, or horse, or with any thing else subject to toll, turn out of any such turnpike road or pass any gate thereon on ground adjacent thereto, and again enter on such road, or without entering again on such road, if for the purpose of evading such toll, shall, for each offense, forfeit and pay the sum of ten dollars, one-half of which to go to the county, and the other half to the corporation injured. *Act March 28, 1871, secs. 20, 21.*

SEC. 1677. Any person who shall poison any lake or stream of water for the purpose of killing (*) stock, or for any other purpose, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred nor more than five hundred dollars. *Act Jan. 16, 1861.*

SEC. 1678. Every person who shall knowingly and maliciously remove any monument of stone or other durable material, erected for the designation of any corner or other point in the boundary of any lot or tract of land, or of the state, or of any legal division of the state, or shall alter or deface the marks upon any tree, post or other monument made for the purpose of designating any point in such boundary, or shall cut down or remove any tree upon which any such mark shall be made, with the intent to destroy such marks, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than one hundred dollars. *Rev. Stat., chap. 44, div. 4, art. 9, sec. 5.*

SEC. 1679. To cut, write upon, deface, disfigure or damage any part or appurtenance, or the inclosure of the state-house, or any other building belonging to the state, shall be a misdemeanor, punishable by fine, not exceeding one hundred dollars. *Act Jan. 10, 1849, sec. 5.*

SEC. 1680. It shall be the duty of the secretary, the auditor, the treasurer, or any official occupant of any part or portion of said public buildings, to cause any person who may offend against the preceding section to be arrested and prosecuted. *Ib., sec. 6.*

SEC. 1681. In all cases where an offense against this act shall be committed by a minor, the parent or guardian of such minor shall be liable for all the penalties thereof. *Ib., sec. 7.*

(*) See SECS. 1921-1925.

SEC. 1682. Nothing in this act shall be so construed as to acquit any person who may be fined, as aforesaid, from liability for any damage done to said public buildings. *Ib.*, sec. 8.

SEC. 1683. Any person who may cut, destroy or remove any timber standing on any of the swamp and overflowed lands granted by congress to this state, on conviction thereof, shall be fined the full value of the timber cut, destroyed or carried away, and be imprisoned not less than two nor more than twenty days. *Provided*, that any person residing on such swamp or overflowed lands shall have the right to cut any timber growing on the tract which he may occupy for his own use for building or farming purposes. *Act Jan. 12, 1853, secs. 35, 36.*

SEC. 1684. It shall not be lawful for any person to cut or remove any timber or stone off the sixteenth sections of land, for the use of schools, or any section or fractional section selected instead of the sixteenth sections.

SEC. 1685. Any person violating the provisions of the preceding section shall, for each offense, be adjudged guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than five nor more than one thousand dollars. *Provided*, that this act shall not apply to any person who resides or has improvements on such lands, so as to prevent him from residing on or using timber or stone for his use or for the use of his improvements; but this proviso shall not be so construed as to permit residents, or those having improvements on said land, to cut or remove any timber or stone off said lands for purposes of speculation or sale (†).

SEC. 1686. If an apprentice shall violate the provisions of the last two preceding sections, the master of such apprentice shall be responsible for such act, and be proceeded against in all respects as though the act had been his own. *Act Jan. 18, 1843.*

SEC. 1687. Every trespasser upon the school lands shall, upon conviction, be fined in three times the amount of damages done, and shall stand committed as in other cases of misdemeanor. *Act April 12, 1869, sec. 13.*

SEC. 1688. If any person shall make, or commence to make, or shall aid or assist in making or commencing to make, any cut-off upon or near the Mississippi River, in this state, across or partly across any point of land or elsewhere, or shall make or commence to make, or shall aid or assist in making or commencing to make, any ditch or trench, or other excavation or work whatever, near or upon said river, in this state, or keep the same open, if now made, whereby the course of said river may be extended or changed, or intended to be changed, directed or turned, or any point of land cut off, such person so offending shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine, in any sum not less than five hundred dollars nor more than ten thousand dollars, and be imprisoned in the penitentiary not less than one nor more than three years. *Act Jan. 15, 1857.*

SEC. 1689. Any person who shall willfully and maliciously destroy, injure or deface any grave or any monument erected or placed to mark the place of interment of any deceased person, or shall willfully and maliciously remove or destroy any inclosure erected for the protection of any such grave or monument, on conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years. *Act March 5, 1867.*

(†) *Query*: As to modification or repeal by implication of SECS. 1683-1685, see SECS. 1659, 1660, 1662.

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SEC. 1685. Any person violating the provisions of the preceding section shall, for each offense, be adjudged guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than five nor more than one thousand dollars. *Provided*, that this act shall not apply to any person who resides or has improvements on such lands, so as to prevent him from residing on or using timber or stone for his use or for the use of his improvements; but this proviso shall not be so construed as to permit residents, or those having improvements on said land, to cut or remove any timber or stone off said lands for purposes of speculation or sale (+).

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SEC. 1687. Every trespasser upon the school lands shall, upon conviction, be fined in three times the amount of damages done, and shall stand committed as in other cases of misdemeanor. *Act April 12, 1869, sec. 13.*

SEC. 1688. If any person shall make, or commence to make, or shall aid or assist in making or commencing to make, any cut-off upon or near the Mississippi River, in this state, across or partly across any point of land or elsewhere, or shall make or commence to make, or shall aid or assist in making or commencing to make, any ditch or trench, or other excavation or work whatever, near or upon said river, in this state, or keep the same open, if now made, whereby the course of said river may be extended or changed, or intended to be changed, directed or turned, or any point of land cut off, such person so offending shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine, in any sum not less than five hundred dollars nor more than ten thousand dollars, and be imprisoned in the penitentiary not less than one nor more than three years. *Act Jan. 15, 1857.*

SEC. 1689. Any person who shall willfully and maliciously destroy, injure or deface any grave or any monument erected or placed to mark the place of interment of any deceased person, or shall willfully and maliciously remove or destroy any inclosure erected for the protection of any such grave or monument, on conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years. *Act March 5, 1867.*

(+) *Query*: As to modification or repeal by implication of SECS. 1683-1685, see SECS. 1659, 1660, 1662.

XXI.—OBSTRUCTING CARS—INJURING RAILROADS.

SECTION

1690. Malicious obstruction of cars, how punished.

1691. Imperilling life by, how punished.

SECTION

1692. Using railroad track as common highway, how punished.

SECTION 1690. Every person who shall willfully and maliciously place an obstruction, by stones, logs or any other thing, on the track of a railroad, or shall tear up or remove, or burn or destroy, any part of any railroad or the works thereof, with intent to obstruct the passage of a car or cars thereon, or to throw them off the track, shall, upon conviction, be imprisoned in the penitentiary for a period not exceeding twenty years.

SEC. 1691. Every person who shall, by any of the unlawful acts enumerated in the preceding section, cause the life of any person to be put in immediate peril, or shall cause any engine or car to be actually thrown off the track of any part of a railroad or the works thereof, shall, upon conviction, be punished by imprisonment in the penitentiary not more than twenty years.

SEC. 1692. Every person who shall use any railroad track as a common highway for horses, cattle or vehicles, other than those propelled on the rails of such railroad in the operation thereof, shall, on conviction, be fined in any sum not exceeding twenty-five dollars for each offense, and may be imprisoned in the county jail for a period not exceeding thirty days. *Act Jan. 28, 1875.*

XXII.—REMOVING PROPERTY MORTGAGED OR SUBJECT TO OTHER LIEN.

SECTION

1693. Punishment for.

1694. Punishment of aiders and abettors.

SECTION

1695. Laborer's lien.

1696. Aidors and abettors.

SECTION 1693. Any person who shall hereafter remove beyond the limits of this state, or of any county wherein the lien may be recorded, property of any kind upon which a lien shall exist by virtue of a mortgage, deed of trust, or by contract of parties, or by operation of law, or who shall sell, barter or exchange or otherwise dispose of any such property without the consent of the person in whose favor such lien shall have been created or exists by law, or who shall secrete the same or any portion thereof, shall be deemed guilty of felony and subject to an indictment, and, upon conviction thereof, shall be sentenced to hard labor in the jail and penitentiary house of this state for a period of not less than one nor more than two years, at the discretion of the jury trying the same (gg). *Act Dec. 21, 1846, sec. 1, as amended by act Feb. 3, 1875.*

(gg) It is no crime to remove from the county a crop on which there is an unrecorded landlord's lien. This section inhibits the removal of property only when the lien is recorded. *Grace v. State*, 40—97. But see *State v. Smith*, 1b., 431, as to a lien created by simply filing a mortgage as provided in section 4750.

Actual recording of the instrument creating the lien is not necessary to make it a felony for one to remove, sell, barter or otherwise dispose of the property. Filing in the recorder's office is sufficient. *Cooper (I. Z.) v.*

SEC. 1694. Any person who shall aid, abet or assist in any manner in the removal of property as prohibited in the foregoing section, upon conviction thereof, shall receive the same punishment as is prescribed therein. *Ib.*, sec. 2.

SEC. 1695. Any person who shall remove beyond the limits of this state, or of any county wherein a lien may exist under the provisions of section 4425, property of any kind, he being the owner thereof, upon which a lien shall exist by virtue of labor performed, without the consent of the person in whose favor such lien shall have been created, shall, upon conviction thereof, be sentenced to hard labor in the penitentiary for not more than two years.

SEC. 1696. Any person who shall aid, abet or assist in the removal of any property to which any lien shall have attached under section 4425, knowing such lien to exist, shall be deemed guilty and punished in the same manner as the principal. *Act Jan. 23, 1868, secs. 2, 3.*

XXIII.—CUTTING OR INJURING LEVEES.

SECTION

1697. Cutting or breaking public levee a felony.

1698. Cutting or breaking private levee a felony, exception.

SECTION

1699. Punishment.

1700. Driving on levees a misdemeanor, how punished.

SECTION 1697. Should any person cut, break or in any wise injure any public levee or levees constructed, or which shall hereafter be constructed, by authority of this state, or paid for, or which shall be paid for, out of any funds of this state, or out of the funds of any county or public corporation, in whole or in part, he shall be deemed guilty of a felony.

SEC. 1698. Any person who shall enter upon the premises of another, and shall willfully and maliciously cut down, break or destroy any levee erected or constructed to prevent the overflow of lands, or any embankment necessary to support such levee, with intent to destroy or injure the same, shall be deemed guilty of a felony. *Provided*, nothing in this act shall be construed to protect any levee or embankment obstructing or damming up a running stream or natural outlet for the water so as to injure other persons, unless the same has been condemned to public use in the manner provided by the constitution and laws of the state.

SEC. 1699. Whenever any person shall be convicted of a felony in any case under the provisions of this act, he shall be punished by imprisonment at hard labor in the penitentiary of this state for a period not less than one nor more than five years. *Act May 29, 1874.*

SEC. 1700. Any person who shall drive a wagon or other vehicle on any of the public levees, or on any private levee, without the consent of the owner thereof, using the same as a road-bed, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than twenty-five nor more than one

State, 37—412. After the offense of removing mortgaged property has been committed, it can not be condoned by satisfying the creditor with other property. *Ib.* As to indictment for disposing of mortgaged property, see same case and *Cooper (G. M.) v. State, Ib.*, 421.

hundred dollars, or imprisoned in the county jail not less than fifteen days nor more than thirty days, or both, at the discretion of the court having jurisdiction of the same. *Provided*, that such levees are constructed and maintained for the purpose of protection against overflow. *Act March 4, 1875.*

XXIV.—TAKING OR INJURING STOCK BY DROVERS.

SECTION

1701, 1702. Punishment for.

SECTION 1701. If horses, asses, cattle, sheep, hogs or other stock fall in with or attempt to follow any drove in passing through a county, and the drover neglects or fails to turn them out or keep them from following, or marks, brands, kills, or in any way injures them, he shall be punished as is now or may hereafter be prescribed by law for marking, branding, enticing away or killing stock belonging to another.

SEC. 1702. A willful violation of sections 2620, 2621, 2622, shall be deemed a misdemeanor, and the party offending shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars. *Act July 16, 1868.*

XXV.—PERJURY.

SECTION

1703, 1704. Perjury defined.

1705. indictment for, what sufficient.

1706. punishment for.

1707. subornation of, defined.

SECTION

1708. Perjury, indictment for, what sufficient.

1709. punishment for.

1710. attempts to procure commission of.

SECTION 1703. Perjury is the willful and corrupt swearing, testifying or affirming falsely to any material matter in any cause, matter or proceeding before any court, tribunal, body corporate or other officer having, by law, authority to administer oaths (hh).

SEC. 1704. The willful and corrupt swearing, affirming or declaring falsely to any affidavit, deposition or probate authorized by law to be taken before any court, tribunal, body politic or officer shall be deemed perjury.

SEC. 1705. In indictments for perjury, it shall be sufficient to set forth the substance of the offense charged, and by what court or before whom the oath

(hh) The materiality of testimony alleged to be perjury must be established by evidence, and not left to presumption or inference. And when there is no dispute about the facts, its materiality is a question of law for the court to decide. *Nelson v. State*, 32—192.

Perjury is an offense against the sovereign whose law is violated by the making of the false oath. *State v. Kirkpatrick*, *Id.*, 117.

As to indictment for perjury, see *State v. Green*, 24—591.

or affirmation was taken, averring such court or person to have competent authority to administer the same, together with the proper averments to falsify the matter wherein the perjury is charged or assigned, without setting forth any part of the record, proceeding or process, either in law or equity, or any commission or authority of the court or person before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same. *Rev. Stat., chap. 44, div. 5, art. 1, secs. 1, 2, 7.*

SEC. 1706. Whoever shall be convicted of perjury shall be imprisoned in the penitentiary not less than five nor more than fifteen years. *Act Dec. 17, 1838, sec. 8.*

SEC. 1707. Subornation of perjury is the procuring of any other person, by any means whatsoever, to commit any willful and corrupt perjury, in any cause, matter, proceeding, affidavit, deposition or probate, in or concerning which such other person shall be legally sworn, affirmed or declared. *Rev. Stat., chap. 44, div. 5, art. 1, sec. 4.*

SEC. 1708. In every indictment for subornation of perjury, or for any corrupt bargain, contract or attempt to procure another to commit perjury, it shall be sufficient to set forth the substance of the offense, without setting forth the record, proceeding or process, or any commission or authority of the court or person before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same. *Ib., sec. 8.*

SEC. 1709. Every person convicted of subornation or perjury shall be imprisoned in the penitentiary not less than five nor more than fifteen years. *Act Dec. 17, 1838.*

SEC. 1710. Every person who shall, by the offer of any valuable consideration, attempt, unlawfully and corruptly, to procure or entice any other person to commit willful and corrupt perjury in any cause, matter or proceeding whatever, in or concerning which such other person might by law be sworn or affirmed, shall, on conviction, be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months. *Rev. Stat., chap. 44, div. 5, art. 1, sec. 1.*

XXVI.—BRIBERY AND EMBRACERY.

SECTION

1711. Bribery of witnesses.

1712, 1713. of jurors, etc.

1714. Partiality of officer selecting jury.

1715. Compounding felony.

SECTION

1716. Conviction of principal offender not necessary.

1717. Attempt to corrupt juror, etc.

1718. Bribery of legislators and public officers.

SECTION 1711. Every person who shall, by bribery (ii), menace and other means, directly or indirectly, induce or attempt to induce any witness to absent himself, or avoid a subpoena or other process, or to withhold his evidence, or shall deter or attempt to deter him from offering or giving evidence in any cause, matter or process, civil or criminal, shall, on conviction, be adjudged

(ii) For definition of bribery, see *Watson v. State*, 29—299.

guilty of a misdemeanor, and be fined not exceeding three hundred dollars, and be imprisoned not exceeding one year.

SEC. 1712. If any person summoned as juror, or chosen an arbitrator, or appointed a referee, shall take any thing to give his verdict, award or report, or shall receive any gratuity, reward or gift from any party to such proceeding or prosecution, for the trial of which such person shall have been summoned as a juror, or for the hearing of which he shall have been chosen an arbitrator, or appointed a referee, he shall, on conviction, be adjudged guilty of a misdemeanor, and be fined in any sum not less than one hundred dollars, and imprisoned not less than six months.

SEC. 1713. If any person, summoned or sworn as a juror, in any case, shall promise or agree to give any verdict for or against any party, in any case or proceeding, civil or criminal, or shall receive any paper, evidence or information from any one in relation to any matter or cause for trial for which he shall be summoned or sworn, without the authority of the court or officer before whom such juror shall have been summoned, and without immediately disclosing the same to such court or officer, he shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months.

SEC. 1714. Every person whose duty it shall be to select or summon jurors, in any court, or before any officer, who shall be guilty of any unlawful, partial or improper conduct in selecting or summoning any juror shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than one hundred dollars.

SEC. 1715. Every person who shall have a knowledge of the actual commission of any offense punishable with death, or of any felony, who shall take any money or any gratuity, or receive any promise, engagement or undertaking therefor, upon agreement or understanding, express or implied, to compound or conceal such crime, or to abstain from any prosecution therefor, or withhold any evidence thereof, shall, upon conviction, be fined in any sum not less than three hundred dollars, and be imprisoned not less than three months.

SEC. 1716. Upon the trial of any indictment, for any offense specified in the last preceding section, it shall not be necessary to prove the conviction of the offender for the offense in relation to which any engagement or understanding therein prohibited shall have been made.

SEC. 1717. Every person who shall corrupt, or attempt to corrupt, any other person summoned or sworn as a juror, or chosen an arbitrator, or appointed a referee, for the hearing of any matter, by giving, or offering to give, any gratuity or gift whatever, with the intent to bias the mind of such juror, arbitrator or referee, or incline him to be more favorable to one side than the other, in relation to any cause, matter or proceeding which may be pending in the court to which such juror shall have been summoned, or in which such referee or arbitrator shall be appointed or chosen, shall be deemed guilty of a misdemeanor, and be fined in any sum not less than one hundred dollars, and imprisoned not less than six months. *Rev. Stat., chap. 44, div. 5, art. 2.*

SEC. 1718. If any person shall, directly or indirectly, promise, offer to give, or cause or procure to be promised, offered or given, any money, goods, right in action, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, right in

action, bribe, present or reward, or any other valuable thing whatever, to any member of the general assembly of the State of Arkansas, after his election as such member, and either before or after he shall have qualified and taken his seat, or to any officer of the state, or person holding any place of profit or trust, under any law of the state, or under the order of either house of the general assembly, with intent to influence his vote or decision on any question, matter, cause or proceeding which may then be pending, or may by law, or under the constitution of the state, be brought before him in his official capacity, or in his place of trust or profit, and shall be convicted thereof, such person so offering, promising, or giving, or causing, or procuring to be promised, offered or given, any such money, goods, right in action, bribe, present or reward, or any promise, contract, undertaking, obligation or security for the payment or delivery of any money, goods, right in action, bribe, present or reward, or other valuable thing whatever, and the member, officer or person who shall in any wise accept or receive the same, or any part thereof, shall be liable to indictment in any court having jurisdiction, and shall, upon conviction thereof, be fined in any sum not exceeding double the amount so offered, promised or given, and be imprisoned in the penitentiary not exceeding two years; and the person convicted of so accepting or receiving the same, or any part thereof, if an officer or person holding any such office, place of trust or profit as aforesaid, shall forfeit his office or place; and any person so convicted shall forever be disqualified to hold any office of trust or profit under the constitution or laws of this state. *Act April 5, 1873.*

XXVII.—STEALING AND DESTROYING PUBLIC RECORDS, Etc.

SECTION

1719. Stealing or avoiding record, process, etc.
1720. Defacing or tearing down advertisement.

SECTION

1721. Stealing or altering poll-book.

SECTION 1719. Every person who shall steal, take away, withdraw or avoid any record, or part or parcel thereof, writ, return, panel, process, or any book or paper, belonging to any of the public offices of this state, or to the records of any court, with intent to injure another, shall be imprisoned in the penitentiary not less than three nor more than ten years (jj). *Act Dec. 17, 1838, sec. 8.*

SEC. 1720. If any person shall intentionally deface, obliterate, tear down or destroy, before the expiration of the time for which the same shall have been set up, any advertisement, copy, transcript or extract from any of the laws of the United States, or of this state, set up at any place in this state by authority of any law of the United States, or of this state, or by the order of

(jj) It is not necessary that the stealing should be from a court of record, properly speaking—from any of the public offices makes the offense complete; stealing bank notes from a justice's court, where they were regularly filed as part of the papers, is within this act. Such crime, charged with intent to defraud a corporation, is well laid. *Wilson v. State*, 5—513.

See *SEC. 1637.*

any court, such person shall, on conviction thereof, be fined in any sum not less than five dollars nor more than one hundred dollars, and may be imprisoned not exceeding thirty days. *Rev. Stat., chap. 6, sec. 4.*

SEC. 1721. Any person who shall change, alter or obliterate the poll-book or books of any election, after such election is closed, or shall break the seals thereof, except as authorized by law, or shall steal, take and carry away any such poll-book or books, shall, on conviction thereof, be fined in a sum not less than fifty dollars nor more than two hundred dollars, and be imprisoned in the penitentiary not less than six months nor more than two years. *Act Dec. 12, 1844.*

XXVIII.—FORGERY, COUNTERFEITING, ETC.

SECTION

- 1722. Counterfeiting coin.
- 1723. public securities.
- 1724. deed, will, record, etc.
- 1725. seal of state, etc.
- 1726. any writing whatever.
- 1727. bank bills, etc.
- 1728. Keeping in possession counterfeit coin.
- 1729. bank bills, etc.
- 1730. counterfeiting instruments.
- 1731, 1732, 1733. Counterfeiting or attempting to counterfeit or pass, or having in possession, etc., incomplete or fictitious bills, etc.

SECTION

- 1734. Making or keeping in possession base coin or metal.
- 1735. Forgery by officer of corporation.
- 1736. False acknowledgment of deed, etc.
- 1737. False entries in public books of account.
- 1738. in bank books.
- 1739. Erasure or obliteration of instrument.
- 1740. Connecting parts of two instruments.
- 1741. Forgery, punishment for.
- 1742. of auditor's warrant, etc.
- 1743. of treasurer's certificate.

SECTION 1722. If any person shall forge or counterfeit any gold or silver coin, which is, or hereafter shall be, passing as current in this state, or shall knowingly and falsely alter, pay or tender in payment any such counterfeit and forged coin, he shall be confined in the penitentiary not less than five nor more than fifteen years.

SEC. 1723. If any person shall forge, counterfeit or alter the warrant of the auditor of state, check of the treasurer of state, or certificate of either, or any other public security or state bond, or coupon of interest thereon, or the bond or coupon of any company or corporation, county, city or town, with intent to defraud the state, or any county, city, town, company, corporation or person; or if he shall be concerned in printing, writing, signing, altering or passing any such forged and counterfeit papers as above described, knowing the same to be forged and counterfeited, he shall, on conviction, be confined in the penitentiary not less than two nor more than five years.

SEC. 1724. If any person shall forge (kk) or counterfeit any deed, will, testament, bond, writing obligatory, bill of exchange or promissory note, for payment of money or other thing, or any indorsement or assignment of a bond, writing obligatory, bill of exchange or promissory note, for the payment of money or other thing, or any acquittance or receipt for money or property or other thing, with intent to defraud another, or shall knowingly utter or pub-

(kk) The term forgery has a fixed legal meaning. It is the fraudulent making or alteration of any writing to the prejudice of another man's rights. *Van Horne v. State*, 5—349; *Lemay v. Williams*, 32—166. As to indictment for, see *McClellan v. State*, *Id.*, 609.

lish as true any such instrument as above described, or shall fraudulently forge, counterfeit or alter any commission, patent, pardon or public record, or an attested copy thereof, of any judicial, executive or legislative officer, or utter as true any of the before described papers, knowing them to be forged, counterfeited or altered, he shall, on conviction, be confined in the penitentiary not less than two nor more than ten years.

SEC. 1725. If any person shall fraudulently make or counterfeit any instrument, stamping or impression in the figure or likeness of the seal officially used by the State of Arkansas, or of the United States, or of any of the states, or of any officer of this state, or of any corporation or officer thereof, or if he have in his possession any such instrument, and conceal the same, knowing it to be falsely made and counterfeited, he shall, on conviction, be confined in the penitentiary not less than five nor more than fifteen years.

SEC. 1726. If any person shall forge or counterfeit any writing whatever, whereby fraudulently to obtain the possession or to deprive another of any money or property, or cause him to be injured in his estate or lawful rights, or if he shall utter and publish such instrument, knowing it to be forged and counterfeited, he shall, on conviction, be confined in the penitentiary not less than two nor more than ten years.

SEC. 1727. If any person shall forge or counterfeit a bank bill or note, or check or draft upon a bank, or the certificate of deposit of money therein of any bank or company incorporated by law in any part of the United States, or any indorsement thereon, or shall erase or alter the same, or any indorsement thereon, or shall tender in payment, utter, vend, exchange, barter or demand to have exchanged for money any such forged, erased, altered or counterfeited bill, note, draft, check or certificate of deposit, or the indorsement thereon, knowing the same to be forged, counterfeited, erased or altered, he shall, on conviction, be confined in the penitentiary not less than two nor more than ten years.

SEC. 1728. If any person shall have or keep in his possession any counterfeit bank note, or counterfeit gold or silver coin, knowing the same to be forged and counterfeited, with the intention of circulating the same, he shall, on conviction, be confined in the penitentiary not less than two nor more than ten years.

SEC. 1729. If any person shall have or keep in his possession promissory notes, purporting to be bank notes on any bank not in existence, or of any unauthorized association of persons for banking, knowing the notes to be such, with the intention of fraudulently circulating the same, or to pass or offer to pass or circulate the same, he shall, on conviction, be confined in the penitentiary not less than two nor more than ten years.

SEC. 1730. If any person shall knowingly make or mend, or proceed to make or mend, or buy or sell, or have in his possession or control, any machine, press, die, tool, plate or stamp, or other instrument or thing used or intended to be used in counterfeiting, he shall, on conviction, be confined in the penitentiary not less than one nor more than four years, and all such machinery, plates, stamps, dies, tools or other instruments shall be seized, and may be used on the trial as evidence, and then defaced and destroyed by order of the court.
Act April 12, 1869.

SEC. 1731. Whoever shall be guilty of forgery, or of counterfeiting, or of paying or tendering in payment, buying, passing or attempting to pass the counterfeit resemblance or imitation of any bank bill, or of any note, check, or draft, or bill of exchange, or instrument which circulates as currency, of any corporation, company or person (*), or purporting to be of any corporation, company or person that really exists, or may exist, or that does not exist, and whether such bill, note, check, draft, bill of exchange or instrument be complete and filled up, or otherwise, with intent to deceive and defraud, shall be imprisoned in the penitentiary not less than five nor more than twenty-one years (ll). *Act Dec. 17, 1838, sec. 4.*

SEC. 1732. Whoever shall fraudulently keep in his possession or conceal the counterfeit resemblance or imitation of any bank bill, note, check or draft, or any instrument which circulates as currency, of any corporation, company or person that exists, or may exist, whether such bill, note, check, draft or instrument be complete and filled up, or otherwise, or shall fraudulently keep in possession or conceal any fictitious instrument, purporting to be a bank bill, note, check or draft of any corporation, company or person, whether the same be filled up and complete or not, though no such corporation, company or person exist (mm), or shall fraudulently alter or erase any genuine bill, note, draft, check or instrument that circulates as currency, of any corporation, company or person, or shall fraudulently keep in possession or conceal any such bill, note, draft, check or instrument that shall be so altered or erased, or shall fraudulently buy, pay or tender in payment, alter or offer to alter, pass or offer to pass, any such bill, note, draft, check or instrument that may be so altered or erased, on conviction, shall be imprisoned in the penitentiary not less than three nor more than ten years. *Ib.*

SEC. 1733. No person shall fraudulently fill up or complete, or begin to fill up or complete, the counterfeit resemblance or imitation of any bank bill, note, check, draft or any instrument that circulates as currency of any corporation, company or person that exists or may exist, or any fictitious instrument, purporting to be a bank bill, note, check or draft of any corporation, company or person, though none such exist, and no person shall fraudulently make or prepare, or begin to make or prepare, any plate or other instrument, whereby to stamp or otherwise make the counterfeit resemblance or imitation of any bank bill, note, check or draft of any corporation, company or person that exists or may exist, or to stamp or otherwise make any fictitious bank bill, note, check or draft purporting to be of any corporation, company or person, though none such exist, and no person shall fraudulently keep in possession or conceal any such plate or instrument whereby to make or stamp the counterfeit resemblance or imitation of any note, bank bill, check or draft of any corporation, company or person that exists or may exist, or whereby to make or to stamp

(*) For construction of the words "corporation, company or person," see SEC. 6339.

(ll) In *Van Horne v. State*, 5—349, counterfeiting change tickets issued by the corporation of Little Rock was held to be forgery within the meaning of this act, though said corporation was prohibited by law from issuing such tickets.

(mm) In an indictment against one for fraudulently keeping in his possession a fictitious instrument purporting to be a bank note, it is not necessary to set forth a copy or *fac simile* of the instrument, but it is sufficient to describe it in such manner as to identify it. *Gabe, alias Santa Anna, v. State*, 6—519. In such an indictment, it is necessary to aver that the defendant had the fictitious note in his possession with intent to utter or pass it as and for a genuine bill, for the intent to impose the instrument on the community as good money constitutes the essence of the offense. *Ib.*

any fictitious bank bill, note, draft or check purporting to be of any corporation, company or person, though none such may exist, whether such plate be complete or not. No person shall fraudulently make or prepare, or begin to make or prepare, any paper of that description which is used for bank bills or notes or other paper currency, or fraudulently make, mend or prepare the paper, molds or other necessary machines or instruments commonly used in the process of making or preparing paper of that kind which is used for bank bills, notes or other paper currency, or fraudulently keep in possession or conceal any such paper, paper molds or other necessary machines or instruments for making or manufacturing the same. Whoever shall be guilty of any of the offenses enumerated in this section shall be imprisoned in the penitentiary not less than five nor more than twenty years. *Act Dec. 17, 1832, sec. 5.*

SEC. 1734. No person shall fraudulently make or begin to make, prepare or complete, any base or adulterated coin, in imitation of any coin which may be current in this state, either by law or usage, nor fraudulently pass or offer to pass any such base or adulterated coin, nor fraudulently keep in possession or conceal any such base or adulterated coin. No person shall fraudulently make or prepare, or begin to make or prepare, any piece of base or adulterated metal, intended to be converted into the counterfeit resemblance of any coin which may be current in this state either by law or usage, nor fraudulently keep in possession or conceal such piece of base or adulterated metal, and every person convicted of any offense named in this section shall be imprisoned in the penitentiary not less than two nor more than ten years. *Ib., sec. 7.*

SEC. 1735. Every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall willfully and designedly sign, with intent to issue, sell or pledge, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share of the capital stock of such corporation, or any certificate or other evidence of the ownership or transfer of any share in such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, promissory note, bond, bill of exchange or other evidence of indebtedness, the signing, issuing, selling or pledging of which by such president, cashier, treasurer, secretary, or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars and imprisoned in the penitentiary not less than one nor more than ten years. *Act Jan. 22, 1855.*

SEC. 1736. If any officer authorized by law to take the proof or acknowledgment of any conveyance of real estate, or of any other instrument which by law may be recorded, shall willfully and falsely certify that any such conveyance or instrument was acknowledged by any party thereto when in truth no such conveyance was acknowledged, or that any such conveyance was proved when in truth no such proof was made, he shall be adjudged guilty of forgery.

SEC. 1737. Every person who shall, with the intent to defraud, make any false entry or shall falsely alter any entry made in any book of accounts kept in the office of the auditor or in the office of the treasurer of this state, or of any county treasurer, by which any demand, obligation, claim, right or interest, either against or in favor of this state, or of any county, city, town or

individual, shall be, or shall purport to be, discharged, diminished, increased, created or in any manner affected, shall, upon conviction, be punished as for forgery.

SEC. 1738. Every person who, with the intent to defraud, shall make any false entry or shall falsely alter any entry made in any book of accounts by any banking corporation within this state, or in any book kept by such corporation or its officers, by which any pecuniary obligation, claim or credit shall be, or purport to be, discharged, diminished, increased, created or in any manner affected, shall, on conviction thereof, be punished as for forgery.

SEC. 1739. The total erasure or obliteration of any instrument or writing, with the intent to defraud, by which any pecuniary obligation or any right, interest or claim to property shall be, or shall be intended to be, created, increased, discharged, diminished or in any manner affected, shall be deemed forgery, in the same manner as the false altering of any part of such instrument or writing.

SEC. 1740. Where different parts of two or more genuine instruments shall be so placed or connected together as to produce one instrument, with intent to defraud, the same shall be deemed forgery, in the same manner as if the parts so put together were falsely made or forged. *Rev. Stat., chap. 44, div. 4, art. 12, secs. 7, 12, 13, 17, 18.*

SEC. 1741. Whoever shall be guilty of forgery, when no other punishment is prescribed, shall be imprisoned in the penitentiary not less than five nor more than twenty-one years. *Act Dec. 17, 1838, sec. 4.*

SEC. 1742. If the auditor of state or any other person shall make or present for payment or approval to the treasurer of state, or to any person whomsoever, any false bill, certificate or warrant, or knowingly advise the making of any such false bill, certificate or warrant for the purpose of obtaining, or of aiding to obtain, any approval or payment of any claim against the State of Arkansas, or if any person shall forge or counterfeit any signature, or any bill, certificate or warrant, or utter or knowingly use the same as true or genuine, he shall, on conviction thereof, be imprisoned in the penitentiary for not less than five nor more than twenty years.

SEC. 1743. If the treasurer of state or any other person shall make or cause to be made a treasurer's certificate, on bank-note paper, without the proper auditor's warrant for his voucher, he shall, on conviction thereof, be imprisoned in the penitentiary not less than five nor more than twenty years. *Act March 16, 1871.*

XXIX.—MALFEASANCE AND MISFEASANCE IN OFFICE AND EXTORTION (*).

SECTION

- 1744, 1745. By commissioner of state lands.
 1746. By judge of county court and clerk thereof.
 1747. Clerks, sheriffs and other officers refusing to render accounts.
 1748, 1749. Assessor failing to make proper assessment.
 1750. Officer disclosing finding of indictment.
 1751. Juror disclosing finding of indictment, etc.
 1752. Clerk acting contrary to his duty.
 1753. Justice refusing to act.
 1754. Failure of justice to attend levying court, penalty.

SECTION

1755. Abstract of cases tried, justice to file.
 1756. Abstract to remain on file with clerk.
 1757. Violation of sections 1755, 1756; how punished.
 1758. Auditor illegally issuing warrant.
 1759. Treasurer illegally refusing to pay.

EXTORTION.

1760. Illegal fees demanded by officers.
 1761. Greater sum demanded from county than allowed by law.
 1762. Extortion by auditor or treasurer.

SECTION 1744. If the commissioner of state lands shall fail to distinctly and publicly offer at public sale to the highest bidder any tract or quantity of the lands designated in the list of additional lands confirmed to the state as swamp and overflowed lands, and not purchased or located by pre-emption right, or sell any such lands privately without first offering them at public sale, or mark any plat belonging to his office so as to falsely indicate that any tract had been sold, or so as to withhold from sale to the first applicant any tract which he might legally and ought to sell to the first applicant therefor, such commissioner, for so doing himself or suffering any one else so to do in his office, shall be deemed guilty of felony, and, upon conviction thereof, shall be punished accordingly.

SEC. 1745. Whenever any person shall be convicted of a felony in any case which shall occur or arise under any provision of this act, he shall be punished by imprisonment at hard labor in the penitentiary for a period of not less than one year nor more than five years. *Act Jan. 13, 1857, and act July 15, 1868.*

SEC. 1746. Any judge of the county court, or clerk of said court, who shall willfully violate any of the provisions of law creating such court and prescribing its duties, or who shall neglect or refuse to perform any duty imposed upon them or either of them by law, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than ten dollars nor more than one thousand dollars, and shall be removed from office (nn). *Act April 3, 1873, sec. 26.*

SEC. 1747. If any collector, sheriff, clerk or other officer shall willfully neglect or refuse to render his accounts to, and settle with, the county court for moneys by him received, or which he ought to have received, to the use of the county, in the manner and at the time prescribed by law, or shall render a false

(*) As to when conviction of an officer works a forfeiture of his office, and judgment of removal from office is to be rendered, see SECS. 1746, 1785, 2325, 6476, and *State v. Carson*, 27—469.

As to embezzlement of public funds by officers, or failure to account and pay over, see SEC. 1643, and see "BRIBERY AND EMBRACERY."

For officers permitting prisoners to escape, or refusing to execute process whereby prisoner escapes, see SECS. 1768, 1780.

For offenses by officers against the revenue law, see SECS. 1781, 1782, 1785.

For clerk failing to make exhibit of county expenses, see SEC. 1789.

For offenses by officers against the election laws and the right of suffrage, see SECS. 1851—1853, 2658, 2701.

(nn) See *State v. Prescott*, 31—39.

account, he shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly. *Rev. Stat., chap. 41, sec. 35.*

SEC. 1748. Any assessor who shall knowingly or willfully fail or neglect to appraise all moneys, credits, investments in bonds or stocks, and all personal property of whatever description or kind, and to appraise all the real estate and improvements thereon in the county for which he is assessor, according to the provisions of the revenue law for this state, shall be deemed guilty of a misdemeanor, and on conviction thereof shall forfeit all his pay as assessor, and shall be forever disqualified from holding any office of profit or trust in this state, and be fined not exceeding one thousand dollars and imprisoned in the penitentiary not to exceed one year (†).

SEC. 1749. A conviction for a failure or neglect to do his duty as assessor shall in no way relieve him from the pains and penalties of perjury, if he makes oath that he has made the assessment according to law. *Act March 26, 1869, secs. 1, 2.*

SEC. 1750. Any judge, clerk or other officer who, not in the discharge of his official duty, shall disclose the fact of any indictment being found, until the defendant therein shall have been arrested or recognized to answer the same, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars. *Rev. Stat., chap. 45, secs. 88, 89.*

SEC. 1751. Any grand juror who shall disclose any evidence given before the grand jury, except when lawfully required to testify as a witness, or who shall disclose the fact of any indictment having been found against any person not in actual confinement, until the defendant shall have been arrested thereon, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars. *Rev. Stat., chap. 45, secs. 75, 76.*

SEC. 1752. If any clerk shall knowingly and willfully do any act contrary to the duties of his office, or shall knowingly and willfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be removed from office. *Rev. Stat., chap. 25, sec. 13.*

SEC. 1753. If any justice of the peace shall refuse to act in any criminal matter brought before him, or shall refuse to issue any criminal process, when properly demanded, or shall refuse to issue process in any civil case, when the legal fee for issuing the same has been tendered, he shall be deemed guilty of a misdemeanor in office, and shall pay to the party injured any sum not less than ten dollars, to be recovered by action. *Rev. Stat., chap. 86, sec. 14.*

SEC. 1754. If any justice of the peace in this state fails to attend the levying court of his county, for the purpose of levying the taxes and making appropriations for the expenses of the county, he shall be deemed guilty of misfeasance in office, and on indictment and conviction in the circuit court shall be fined in any sum not less than ten nor more than one hundred dollars. *Provided*, nothing in this section shall apply to justices having a legal or reasonable excuse. *Act March 6, 1883.*

SEC. 1755. It shall be the duty of each justice of the peace in this state to file an abstract of all the misdemeanors tried before him with the clerk of his

(†) See SECS. 5685, 5654.

county, on or before the first day of the succeeding term of the circuit court, giving the style of the case, the nature of the offense, how he obtained jurisdiction of the case, whether the defendant was acquitted or convicted, and, if convicted, the amount of fine or punishment imposed.

SEC. 1756. The abstract provided for in the preceding section shall remain on file with said clerk, subject to the inspection of the grand jury, the prosecuting attorney and all other persons interested in the same.

SEC. 1757. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five nor more than fifty dollars. *Act Feb. 11, 1875.*

SEC. 1758. If the auditor of state shall knowingly issue any warrant upon the treasury not authorized by law, he shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, he shall forfeit for the use of the state any sum not less than fifty dollars. *Rev. Stat., chap. 18, sec. 32.*

SEC. 1759. If the treasurer of state shall willfully and unlawfully refuse to pay any warrant drawn upon the treasury, having funds on hand for that purpose, he shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be fined for the use of the state in any sum not less than one hundred dollars. *Ib., sec. 33.*

EXTORTION.

SEC. 1760. If any officer shall charge, demand or receive any more or greater fees for his services than are allowed by law, or shall demand, charge or receive any such fees without having performed the services for which the same are charged, such officer, for every such offense, shall forfeit to the party injured, or against whom the same may be charged, the amount of fees illegally charged, and five dollars for each item illegally demanded, charged or received, with cost, to be recovered by action, and shall also be subject to an indictment for extortion (oo). *Act Dec. 23, 1842, sec. 35.*

SEC. 1761. Any person who shall violate the provisions of sections 1414, 3248, 3260, 3261, or corruptly charge or receive from any county a greater sum than that allowed by law, shall be deemed guilty of a misdemeanor, and, on conviction, be punished by a fine not to exceed five hundred dollars, and the same shall work a forfeiture of his office. *Act April 28, 1873, sec. 9.*

SEC. 1762. If the auditor or treasurer of state shall willfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty not allowed by law, or shall by color of his office knowingly do any act not authorized by law, or shall use any of the moneys belonging to the state, or shall perform any other duty of his office in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and, on conviction thereof, shall forfeit for the use of the state any sum not less than one hundred dollars. *Rev. Stat., chap. 18, sec. 34.*

(oo) If an officer take a fee not authorized by law, under the belief that he is by law entitled to it, and without any corrupt intent in the matter, he is not guilty of extortion. *Leeman v. State*, 35—438. It is a sufficient averment of a corrupt intent in an indictment for extortion to allege that the defendant "extorsively" took the unlawful fee. *Ib.*

XXX.—BARRETRY.

SECTION

1763. Punishment for.

SECTION

1764. Bringing or encouraging frivolous suit.

SECTION 1763. Every person who shall be convicted of being a barretor (*) shall be fined in any sum he may be able to pay, not less than one hundred dollars, and may be imprisoned six months. *Rev. Stat., chap. 44, div. 5, art. 3, sec. 15.*

SEC. 1764. Any officer or any person who shall bring, or aid and encourage others to bring, frivolous, groundless or malicious prosecutions, shall be deemed guilty of a misdemeanor. *Act March 23, 1871, sec. 5.*

XXXI.—OBSTRUCTING PROCESS—ESCAPE AND RESCUE.

SECTION

1765. Obstructing or resisting execution of writ, etc.

1766. Assaulting officer.

1767. Drawing weapon on officer.

ESCAPE AND RESCUE.

1768. Rescue in case of felony.

1769. In case of misdemeanor.

1770. Escaped convict may be retaken.

1771. Aiding an escape.

SECTION

1772. Escape, etc., of penitentiary convict.

1773. Attempt at rescue.

1774. Conveying instruments into jail to aid escape.

1775. Attempt to escape by force or violence.

1776, 1777. Officer permitting escape.

1778. failing to execute process.

1779. Jailer refusing to receive prisoner.

1780. Permitting escape of penitentiary convict.

SECTION 1765. If any person shall knowingly and willfully obstruct or resist (pp) any sheriff, or other ministerial officer, in the service or execution of, or in the attempt to serve or execute any writ, warrant or process, original or judicial, in discharge of any official duty, in case of felony, or any other case, civil or criminal, or in the service of any order or rule of court, in any case whatever, he shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty dollars, and may also be imprisoned not exceeding six months.

SEC. 1766. Every person who shall assault, beat or wound any officer while engaged in the service or execution of, or in attempting to serve or execute, any writ, warrant or process, original or judicial, or any order or rule of court, or while engaged in the discharge of any official duty, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in the last preceding section. *Rev. Stat., chap. 44, div. 5, art. 3, secs. 1, 2.*

SEC. 1767. Every person who shall resist the execution of any civil or criminal process, by threatening, or by actually drawing a pistol, gun or other deadly weapon upon the sheriff or other officer authorized to execute such process, shall, upon conviction thereof, be imprisoned in the penitentiary for a term not less than one nor more than five years. *Act July 23, 1868.*

(*) A barretor is one who excites or maintains suits and quarrels, either in courts or elsewhere in the country; a disturber of the peace, who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors. *Burrill's Law Dic., Tit. "Barretor."*

(pp) By the use of these terms the legislature did not intend to create two distinct and different offenses. *Sticker v. State, 13—397.* As to indictment under this section, see *Oliver v. State, 17—508.*

ESCAPE AND RESCUE.

SEC. 1768. Whoever shall, by force or menaces of bodily harm, or by other unlawful means, set any one at liberty who is in custody, after a lawful arrest, either before or after conviction for any felony, knowing or being informed that such offender is lawfully arrested; or any officer or other person having such offender in custody, upon a lawful arrest or conviction, for any such offense, who shall voluntarily, corruptly and of purpose let such prisoner escape (qq), shall, on conviction, be imprisoned in the penitentiary not less than two nor more than seven years. *Act Dec. 17, 1838, sec. 10.*

SEC. 1769. Every person who shall by force set at liberty or rescue any person held in custody or prison for any offense other than felony, whether before or after conviction, or upon any writ or process, original or judicial, in any civil case, shall, upon conviction, be fined in any sum not less than one hundred dollars and be imprisoned not less than six months.

SEC. 1770. If any person sentenced to imprisonment in any jail or other place of confinement, on conviction for a criminal offense, shall escape, he shall be pursued, retaken and again imprisoned, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time he is retaken, and shall remain so imprisoned until tried for such escape, or until discharged by due course of law.

SEC. 1771. Every person who shall, by any means whatever, aid or assist any prisoner lawfully committed to any jail or place of confinement, or in custody of any officer, in any case, civil or criminal, to escape therefrom, whether such escape be effected or not, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not exceeding five hundred dollars and be imprisoned not exceeding one year. *Rev. Stat., chap. 44, div. 5, art. 3, secs. 5, 8, 14.*

SEC. 1772. If any convict confined in the penitentiary shall escape therefrom, he shall, on conviction thereof, be punished by imprisonment in the penitentiary not less than five nor more than ten years. If any convict shall openly rebel, with intent to kill the keeper or any other officer of the penitentiary, or with intent by open violence to escape therefrom, he shall, on conviction, be punished by confinement therein during his natural life; and if any two or more convicts shall conspire together, and shall not have carried their intention into execution, on conviction thereof, they shall undergo a further imprisonment of not less than five nor more than ten years, to commence at the end of the terms of time for which said persons were under sentence of confinement. *Act Dec. 17, 1838.*

SEC. 1773. The attempt to rescue and set at liberty by force any person in custody, or in prison, although the attempt fail of success, shall be deemed a misdemeanor, and, on conviction, the offender shall be fined in any sum not less than one hundred dollars.

SEC. 1774. Every person who shall convey into any jail or place of confinement any disguised instrument, arms or other thing proper or useful to aid any prisoner in his escape, with the intent thereby to facilitate the escape of any prisoner lawfully committed to or detained in such jail or place of confinement, for felony or other criminal offense, or detained therein for any violation of any

(qq) See note (rr) post. As to negligent escapes, see *Martin v. State*, 32—124.

penal statute, or in any civil action, whether such escape be effected or attempted or not, shall be deemed guilty of a misdemeanor, and, on conviction, be fined in any sum not less than one hundred dollars and be imprisoned not less than six months.

SEC. 1775. Every person lawfully imprisoned in any jail or other place of confinement, or held in custody of any officer, for any cause whatever, who shall attempt, by force or violence to any person, to effect his escape from such imprisonment or custody, although no escape be effected, shall be adjudged guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars and imprisoned not less than six months, which imprisonment shall commence at the end of the term for which such person may be in prison.

SEC. 1776. If any officer or other person having by law the custody or charge of any jail, or other place of confinement, or the under officer or deputy of such officer or person, shall knowingly suffer or permit any disguised instrument, arms or other thing proper or useful to aid any person in his escape to be conveyed into or remain in such jail or place, he shall, upon conviction, suffer the like punishment as the person conveying such disguised instrument, arms or other thing into such jail or place of confinement would be liable to, according to the provisions of this act.

SEC. 1777. If any officer, or his under officer or deputy, having the lawful custody of any prisoner, for any cause whatever, shall voluntarily suffer, or permit, or connive at the escape of such prisoner from his custody (rr), or permit him to go at large, he shall, upon conviction, be punished in the same manner as if convicted of aiding or assisting such prisoner to escape.

SEC. 1778. If any sheriff or other officer shall willfully and corruptly fail or refuse to execute any lawful process whatever, which by law it is his duty to execute, requiring the apprehension or confinement of any person charged with a criminal offense, whereby such person shall escape, the officer so offending shall be punished in the same manner as persons aiding or assisting an escape.

SEC. 1779. If any jailer, or keeper of any jail, shall refuse to receive in the jail under his charge any person lawfully committed to such jail on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction, be deemed guilty of a misdemeanor, and fined not less than one hundred dollars and be dismissed from his office. *Rev. Stat., chap. 44, div. 5, art. 3.*

SEC. 1780. Any person who shall willfully or corruptly suffer, connive at, or permit the escape of any convict sentenced to confinement in the penitentiary shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by confinement in the penitentiary for not less than five nor more than ten years. *Act March 21, 1881.*

(rr) See *Bass v. State*, 29—142; *Martin v. State*, 32—124; *Griffin v. State*, 37—437.

XXXII.—OFFENSES AGAINST THE REVENUE (*).

SECTION

1781. Collector or deputy purchasing land sold for taxes.

1782. collecting taxes not on tax-book.

1783. Disposing of property to avoid assessment.

1784. Refusing to pay special taxes.

1785. County treasurer failing to settle.

SECTION

1786. President or agent of bank failing to list stock.

1787. Express, insurance or telegraph companies failing to pay.

1788. False listing of property for taxation, perjury.

1789. Clerk failing to make exhibit of county expenses.

SECTION 1781. Should any collector or his deputy be concerned, either directly or indirectly, in the purchase of any tract of land or town lot sold for the payment of taxes, he shall be liable to a penalty of five hundred dollars, to be recovered by indictment. *Rev. Stat., chap. 128, sec. 94.*

SEC. 1782. If any collector shall collect taxes not stated on the tax-book, or shall collect a greater amount than is therein stated, except as authorized by law, he shall, upon conviction thereof, be imprisoned in the penitentiary not less than one nor more than five years, and make restitution in double the amount wrongfully collected.

SEC. 1783. If any person shall, for the purpose of avoiding the listing or the payment of taxes on any property subject to taxation, sell, give away or otherwise dispose of such property, under or subject to any agreement, expressed or implied, or any understanding with the purchaser, donee or recipient thereof, that the same is to be reconveyed, restored or delivered to the person so disposing of such property, he shall, upon conviction thereof, be fined not less than five hundred nor more than one thousand dollars.

SEC. 1784. If any person following the occupation of auctioneer, exhibitor of circus or menagerie on which specific taxes are by law levied shall fail, refuse or neglect to pay said taxes, he shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than two hundred nor more than one thousand dollars, and stand committed until such fine and costs be paid (**).

SEC. 1785. Should any county treasurer refuse or neglect to make settlement as required by law, or, having settled, failed to produce, for counting, the amount found to be in his hands (**), he shall be deemed guilty of a misdemeanor, and, upon conviction, be punished by a fine of one hundred dollars, and his said office shall be by the court declared forfeited.

SEC. 1786. If the president or principal accounting officer or agent of any bank or incorporated company shall fail to comply with the provisions of the law in regard to listing or the payment of taxes on the shares or capital stock of such bank or incorporated company, at the time fixed by law for listing property or paying taxes, he shall, upon conviction thereof, be deemed guilty of a felony, and shall be fined not less than one thousand and not more than five thousand dollars, and imprisoned in the penitentiary not less than one nor more than five years; and the fine hereby imposed shall be a lien against the assets of such bank or incorporated company, and execution may issue as in other cases.

(*) For other offenses against the revenue law, see SECS. 5734, 5743, 5617, 5619, 5642, 5646, 5655, 5685, 5872.

(**) That part of this section which applied to peddlers is omitted because of the decision in *State v. McGinnis*, 37—362.

(***) See *Vance & Wallace v. State*, *use, etc.*, 35—176.

SEC. 1787. If the taxes assessed against any express, insurance or telegraph company, in any county, shall remain due and unpaid after the tenth day of February, in any year, it shall be unlawful for any person or corporation to act as agent, or do or transact any business for such company so in default in such county, until said tax and interest and penalty is fully paid; and any person, or agent, manager or clerk of any corporation who shall, after such default, directly or indirectly, act as agent of, or do or transact any business whatever on account of, or for the benefit of, such company so in default shall, upon conviction thereof, be confined in the penitentiary not less than one nor more than twelve months.

SEC. 1788. Any president, secretary, receiver, accounting officer, servant, agent or person who shall knowingly make any false answer to any question or statement required by law touching the business, property, moneys and credits of such person or corporation liable to taxation shall be deemed guilty of perjury. *Act April 28, 1873, secs. 83, 137, 159, 189, 17, 28, 38.*

SEC. 1789. Any clerk who shall refuse to comply with the requirements and provisions of section 1429 shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars, and may be imprisoned not exceeding one month. *Act Jan. 14, 1857, sec. 3.*

XXXIII.—DUELING AND CHALLENGES.

SECTION

- 1790. Duel where death does not ensue.
- 1791. Bearing challenge, etc.
- 1792. Offending parties compelled to testify.
- 1793. Conviction incapacitates for holding office.

SECTION

- 1794. Former conviction or acquittal, a bar.
- 1795. Production of written challenge not necessary on trial.

SECTION 1790. Every person who shall fight a duel with a deadly weapon, if death does not ensue, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum he may be able to pay, not less than one thousand dollars, and be imprisoned not less than one year.

SEC. 1791. Every person who shall induce another to fight such a duel, or who shall send or deliver any written or verbal message purporting or intended to be such challenge, or who shall accept such challenge or message, or who shall be present at the time and place of fighting any such duel with deadly weapons, either as second, aid or surgeon, or who shall advise, countenance or assist in such duel, shall, upon conviction, be fined not less than five hundred dollars, and be imprisoned not less than six months.

SEC. 1792. Every person offending against any of the provisions of this statute shall be a competent witness against any other person offending in the same transaction, and shall be compelled to appear and give evidence before the grand jury, or in any court, in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding against the person so testifying.

SEC. 1793. Every person convicted of a violation of the provisions of the first section of this title shall be incapable of holding, or being elected or ap-

pointed to, any office, post or place of trust or profit, civil or military, under the constitution or laws of this state (*).

SEC. 1794. Every offender under this title may plead a former conviction or acquittal for the same offense in another state or county, and if such plea be admitted or established it shall be a bar to any further or other proceeding against such person for the same offense.

SEC. 1795. On the trial of any person for any offense under the provisions of this title, if there was a written challenge to fight, or any other paper, it shall not be necessary, on the part of the prosecution, to produce such challenge or paper, but it shall be sufficient to prove that there was a challenge or agreement to fight, either verbal or written; or that such person did fight, or did agree to fight, as the case may be, shall be sufficient. *Rev. Stat., chap. 44, div. 5, art 4, secs. 2-7.*

XXXIV.—RIOT—AFFRAYS—DISTURBING THE PUBLIC PEACE.

SECTION

1796, 1797. Riot defined and punished.

AFFRAYS.

1798. Affray defined and punished.

1799. aggravated; punishment.

DISTURBING THE PUBLIC PEACE.

1800. By loud noise, threats, etc.

1801. Disturbers failing to disperse.

SECTION

1802. Profane or abusive language.

1803. Peace officers to arrest disturbers.

1804. Proceedings after arrest.

1805. Penalty for failure to arrest.

1806. Drawing deadly weapon.

1807. Insulting teacher.

1808. Forcibly taking or holding real estate.

SECTION 1796. If three or more persons assemble together with the intent, or, being assembled, shall agree, mutually, to assist each other to do an unlawful act, with force or violence, against the person or property of another, or against the peace or to the terror of the people, and shall accomplish the purpose intended, or do any unlawful act in furtherance of such purpose, in a violent or turbulent manner, every person so offending, or who shall aid or assist in doing any unlawful act, shall be adjudged guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars, or by both fine and imprisonment. *Rev. Stat., chap. 44, div. 8, art. 1, sec. 1.*

SEC. 1797. If any person or persons do an unlawful act, with force or violence, against the person or property of another, with or without a common cause or quarrel, or even do a lawful act in a violent or tumultuous manner, the person so offending shall be deemed guilty of a riot, and, on conviction, shall severally be fined in any sum not more than five hundred dollars, or imprisoned in the county jail not more than three months, or both. *Act July 23, 1868, sec. 9.*

AFFRAYS (ss).

SEC. 1798. If two or more persons shall, by agreement, fight, to the terror of any citizen of this state, the person or persons so offending shall be deemed

(*) See art. XIX, sec. 2, *Const.*

(ss) See *Childs v. State*, 15—204; *State v. Brewer*, 33—176.

guilty of an affray, and shall be fined in any sum not less than ten nor more than one hundred dollars, or be imprisoned in the county jail not less than one nor more than three months, or both. *Act July 23, 1868, secs. 2, 3.*

SEC. 1799. If any persons fight by mutual agreement, and one of them be maimed, it shall not be deemed maiming, but the parties shall be punished by fine and imprisonment, as for an aggravated affray, which fine shall not exceed one thousand dollars, and the imprisonment shall not exceed one year. *Rev. Stat., chap. 44, div. 3, art. 3, sec. 8.*

DISTURBING THE PUBLIC PEACE.

SEC. 1800. If any person shall willfully or maliciously disturb, either by day or night, the peace and quiet of any town, village, neighborhood or family by loud or unusual noise, or by abusive, violent, obscene or profane language, whether addressed to the party so disturbed or some other person, or by threatening to fight, quarreling or challenging to fight, or fighting, or shooting off any fire-arms, or brandishing the same, or by running any horse at unusual speed along any street, alley, highway or public road, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not more than three hundred dollars, or be imprisoned in the county jail not less than one month nor more than six months, or both, at the discretion of the court or jury trying the case. *Act July 23, 1868, sec. 1, as amended by act March 21, 1881.*

SEC. 1801. If two or more persons assemble together for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge, justice of the peace, sheriff, coroner, constable or other public officer, all persons so offending shall, on conviction thereof, be severally fined in any sum not less than ten nor more than one hundred dollars, or imprisoned in the county jail not less than one nor more than three months, or both.

SEC. 1802. If any person shall make use of any profane, violent, abusive or insulting language toward or about another person, in his presence or hearing, which language, in its common acceptance, is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault, every such person shall be deemed guilty of a breach of the peace (tt), and, upon conviction thereof, shall be punished by a fine of not less than five nor more than three hundred dollars, or by imprisonment in the county jail, in close confinement, for not less than one nor more than six months, and any person who shall be punished by fine only under the provisions of this section, and shall not pay said fine, or secure the payment thereof to the satisfaction of the court, before such person is released from custody, it shall be the duty of the officer having such person in custody to confine him in the county jail until such fine is paid, at the rate of two dollars per day.

SEC. 1803. It shall be the duty of every justice of the peace, police magistrate, sheriff, coroner, constable and police officer who may have personal knowledge of the commission of any breach of the peace, as defined in the last preceding section, to arrest such offender and bring him to trial.

(tt) See SEC. 1901. Whether profane language is calculated to arouse to anger or produce a breach of the peace is a question to be left to a jury. *State v. Moser*, 33—140. As to using insulting language to a crowd, see *Hearn v. State*, 34—550. As to indictment under this section, see *State v. Hulson*, 40—361.

SEC. 1804. Any person so arrested shall be taken before the nearest justice of the peace, who shall at once proceed to hear such complaint as may be lodged against the person so arrested, unless, for good cause shown, the examination or trial of such cause may be continued not more than thirty days at one time. In case of any continuance of such cause, the court shall require the person so arrested to enter into bond for his appearance, with sufficient security, to be approved by the court, in a sum not less than the largest fine that may be imposed for such offense.

SEC. 1805. Any officer whose duty it may be to make or cause the arrest of persons so offending, or any judge or justice of the peace having jurisdiction of such offenses, who shall fail or refuse to arrest, or cause to be arrested, and bring to justice any person whom they may know, or may be legally informed, to have so offended shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished.

SEC. 1806. Every person who shall draw a pistol, gun or any other deadly weapon upon any other person, for the purpose of frightening or intimidating him from doing or attempting to do any lawful act, when such person drawing said pistol, gun or other deadly weapon is not justified in self-defense for so doing, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than five hundred dollars nor more than one thousand dollars and be imprisoned in the county jail for twelve months. *Act July 23, 1868, secs. 2-8 and 13.*

SEC. 1807. If any parent, guardian or other person, from any cause, fancied or real, visit any school and insult any teacher in the presence of his pupils, the person offending by such conduct shall be liable to a fine of twenty-five dollars. *Act Dec. 7, 1875, sec. 85.*

SEC. 1808. Every person who shall take or keep possession of any real estate by actual force or violence, without the authority of law, or who, being armed with a deadly or dangerous weapon, shall by violence to any person entitled to the possession, or by putting in fear of immediate danger to his person, obtain or keep possession of any such real estate or property without legal authority, shall, on conviction, be adjudged guilty of a misdemeanor and be fined not less than fifty dollars and be imprisoned not exceeding one year. *Rev. Stat., chap. 44, div. 8, art. 1, sec. 6.*

XXXV.—LIBEL AND SLANDER.

SECTION

1809. Libel defined.

1810. punishment for.

1811. truth may be given in evidence.

1812. Proclaiming person coward for not accepting challenge.

SLANDER.

1813, 1814, 1815. Slander, what is.

SECTION

1816. Slander, no indictment for, unless.

1817. truth of words may be given in evidence.

1818. prosecution for, does not prevent civil suit.

1819. limitation of offense.

1820. punishment for.

SECTION 1809. A libel is a malicious defamation, expressed either by writing, printing or by signs or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, veracity, virtue or reputation, or to publish the natural defects, of one who is living, and thereby expose him to public hatred, contempt and ridicule.

SEC. 1810. Every person, whether writer, printer or publisher, convicted of the crime of libel shall be fined in any sum not exceeding five thousand dollars and may also be imprisoned not exceeding one year.

SEC. 1811. In all prosecutions for libel, under the provisions of the preceding sections, the truth thereof may be given in evidence in justification. *Rev. Stat., chap. 44, div. 8, art. 2, secs. 1-3.*

SEC. 1812. If any person shall in any newspaper, or handbill or other advertisement printed or written, publish or proclaim any other person as a coward, or use any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person, on conviction, shall be fined in any sum not less than three hundred dollars, nor more than one thousand dollars, or be imprisoned in the penitentiary at hard labor for a term of not less than two months nor more than one year, or both fine and imprisonment. The publisher or printer of any newspaper, handbill or other publication may be summoned as a witness, and shall be required to testify against the writer of such handbill or publication; and if any such publisher or printer shall refuse to testify in relation to the premises, either before the grand or petit jury or any judicial officer, he shall be deemed guilty of a flagrant contempt of court, and may be punished by fine and imprisonment or either. *Provided, however,* that the testimony given by any such witness shall in no case be used in any prosecution or civil suit against such witness. *Act July 23, 1868, sec. 11, and Rev. Stat., chap. 44, div. 8, art 2, secs. 4-7.*

SLANDER.

SEC. 1813. If any person shall falsely use, utter or publish words which, in their common acceptation, shall amount to charge any person with having been guilty of fornication or adultery, such words, so spoken, shall be deemed slander, and shall be actionable and indictable as such.

SEC. 1814. It shall be deemed slander, and shall be actionable, to charge any person with swearing falsely, or with having sworn falsely, or for using, uttering or publishing words of, to or concerning any person which, in their common acceptation, amount to such charge, whether the words be spoken in conversation of and concerning a judicial proceeding or not.

SEC. 1815. It shall be deemed slander to falsely use, utter or publish words which, in their common acceptance, shall amount to charge any person with having been guilty of any other crime or misdemeanor not mentioned in this act, or to charge any person with having been guilty of any dishonest business or official conduct or transaction, the effect of which charge would be to injure the credit or business standing, or to bring into disrepute, the good name or character of such person so slandered, and such words, so spoken, shall be actionable, and the person so falsely publishing, speaking or uttering the same shall be deemed guilty of slander and punished accordingly.

SEC. 1816. No indictment shall be found under this act except at the instance or by consent of the person slandered or his legal representative.

SEC. 1817. Upon the trial of any person for the crime of slander he shall be allowed to give in evidence the truth of the words charged in the indictment to have been spoken by him.

SEC. 1818. Nothing in this act contained shall be so construed as to prevent any person slandered from bringing and maintaining a civil suit against any person committing such slander for damages.

SEC. 1819. All presentments made under this act must be made within twelve months from the date of uttering or publishing such slander.

SEC. 1820. Slander shall be a crime; and any person who shall hereafter be found guilty of the crime of slander shall, upon conviction thereof, be imprisoned in the penitentiary, at hard labor, for a term of not less than six months nor more than three years, or fined not less than fifty nor more than three thousand dollars, or both fine and imprisonment may be imposed; and any person so convicted and punished by fine only, if such fine be not paid at once, shall be confined in the penitentiary, at hard labor, until such fine be paid, at the rate of two dollars per day. *Act March 19, 1869.*

XXXVI.—CONSPIRACIES AND USURPATION OF OFFICE.

SECTION

1821. Conspiracy to usurp the government.

1822. to commit felony.

1823. to cheat.

SECTION

1824. Conspiracy to procure indictment.

1825. Usurpation of office.

SECTION 1821. If any two or more persons conspire, by force or otherwise, to usurp the government of the state, or overthrow the same, or seize any department thereof, or obstruct the administration of justice, by interrupting the proceedings thereof, or by intimidating any court of justice, or any officer of the law, evidenced by any acts or by forcible attempts to accomplish any of the purposes aforesaid, every person so offending shall, upon conviction, be punished by imprisonment in the penitentiary for a period of not less than one nor more than fifteen years, in the discretion of the court. *Act Feb. 27, 1873.*

SEC. 1822. If two or more persons shall agree and conspire to commit any felony, and make some advance thereto, without committing the felony, they shall be deemed guilty of a misdemeanor.

SEC. 1823. If two or more conspire to cheat any person out of any money or other property by false pretenses or false tokens, and make some advance thereto, they shall be deemed guilty of a misdemeanor.

SEC. 1824. If one or more persons shall contrive and intend to have any person indicted on any false criminal charge, and make some advance thereto, although such person may not be indicted, he or they shall be deemed guilty of a misdemeanor. *Rev. Stat., chap. 44, div. 8, art. 1, secs. 8-10.*

SEC. 1825. If any person shall exercise or attempt to exercise the duties of any office created by the constitution and laws of this state, without first being qualified in the manner prescribed by law for the discharge thereof, the person so offending shall, upon conviction, be punished by imprisonment in the penitentiary for a period not less than one year nor more than five years, in the discretion of the court. *Act Feb. 27, 1873.*

XXXVII.—DIVULGING CONTENTS OF TELEGRAM.

SECTION
1826. Punishment for.

SECTION 1826. Any person connected with any telegraph company in this state, either as agent, clerk, operator, messenger, or in any other capacity, who shall willfully divulge the contents or the nature of the contents of any private communication intrusted to him for transmission or delivery, or who shall willfully refuse or neglect to transmit or deliver the same, on conviction, shall pay a fine of not less than five hundred dollars, nor more than one thousand dollars, or be imprisoned in the county jail for not less than six nor more than twelve months, or shall be punished with both fine and imprisonment. *Act July 16, 1868, sec. 3.*

XXXVIII.—GAMING.

SECTION
1827. Keeping gaming device.
1828. Persons interested in, guilty of misdemeanor.
1829. Betting on such devices.
1830. Permitting gaming.
1831. Exhibitors of gaming devices.
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1836. Indictment for, what to charge.
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1839. Penalty for refusing to obey summons.
1840. How statute to be construed.
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1842. Keno, unlawful to set up or exhibit.
1843. Arrests for, duty of prosecuting attorney.
1844. Duty of justices.
1845. Failure of justice to act, a misfeasance in office.
1846. Prosecuting attorney failing to cause arrest, how punished.
1847. No license to bar a prosecution.
1848. Dealing in futures declared to be gambling.
1849. How punished.

SECTION 1827. Every person who shall set up, keep or exhibit any gaming table or gambling device, commonly called A. B. C., E. O., roulette, rouge et noir, or any faro bank, or any other gaming table or gambling device, or bank

of the like or similar kind, or of any other description, although not herein named, be the name or denomination what it may, adapted, devised or designed for the purpose of playing any game of chance, or at which any money or property may be won or lost, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than one hundred dollars, and may be imprisoned any length of time, not less than thirty days nor more than one year (uu).

SEC. 1828. If any person shall in any way, either directly or indirectly, be interested or concerned in any gaming prohibited by section 1827, either by furnishing money or other articles for the purpose of carrying on gaming, or being interested in the loss or gain of such prohibited gaming, he shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined as in the said section.

SEC. 1829. If any person shall be guilty of betting any money or other valuable thing, or any representative of any thing that is esteemed of value, on any of the games herein prohibited, on conviction, he shall be fined in any sum not exceeding one hundred dollars, nor less than fifty dollars (vv).

SEC. 1830. If the owner or occupant of any house, outhouse or other building, or any steamboat or other vessel, shall knowingly permit or suffer any of the before-mentioned games, tables or banks, or shall suffer any kind of gaming, under any name whatsoever, to be carried on or exhibited in their houses, or outhouses or other buildings, or on board of any steamboat, flatboat, keelboat or other vessel, on any of the waters within this state, on conviction thereof, every such owner or occupant shall be fined in any sum not less than one hundred dollars, and may be imprisoned not less than thirty days nor more than one year (ww).

SEC. 1831. All and every keeper or exhibitor of either of the gaming tables called A. B. C. or E. O., or any other table distinguished or known by any other name, letter or figure, faro bank, rouge et noir, or any gaming bank of the same or like kind, with or without a name, shall be deemed and rated as vagrants.

SEC. 1832. It is hereby made and declared to be the duty and required of the judges of the supreme court, the judges of the circuit courts and of the justices of the peace, on information given or on their own knowledge, or where they have reasonable ground to suspect, that they issue their warrant to some peace officer, directing in such warrant a search for such gaming tables or devices hereinbefore mentioned or referred to, and directing that, on finding any such, they shall be publicly burned by the officer executing the warrant. Such warrant may be substantially in the following form :

THE STATE OF ARKANSAS.

To any sheriff, constable, coroner, jailer, marshal or policeman of the State of Arkansas :

Whereas, information has been given to the undersigned, a justice of the peace in and for the county of ——— (or, whereas, it has come to the knowledge of the undersigned, etc.; or, whereas, the undersigned, etc., has reasonable grounds to suspect), that there is at ———, in said county, a certain gaming

(uu) See *Brown v. State*, 10—607; *Johnson v. State*, 13—684; *Rose's Digest*, 373; *State v. Lindsay*, 34—372; *Euper v. State*, 35—629; *Stephen Trimble v. State*, 27—355; *Portis v. State*, *Ib.*, 360.

(vv) See *Drew v. State*, 10—82; *Warren v. State*, 18—195; *State v. Grider*, *Ib.*, 297.

(ww) See *Stith v. State*, 13—680; *Vanderworker v. State*, *Ib.*, 700; *Brockway v. State*, 36—629.

device, commonly called ———, there kept contrary to the statute in such case made and provided: You are therefore hereby commanded to make search there for such gambling device, and, if the same be found, then that you forthwith proceed publicly to burn the same, according to law. Hereof fail not, and make due return of this writ.

Given under my hand, this ——— day of ———, 18—.

———, J. P.

SEC. 1833. The officer executing such warrant, and burning, by virtue thereof, any gaming device, as required in the last preceding section, shall, on his making his return to the officer who issued the same, and getting the statement of such judge or justice that said warrant has been returned to him, duly executed, by the burning of any gaming device, stating what, or describing the device burnt, indorsed on such warrant, be entitled to his fees for such service, to be paid by the person keeping such gambling table.

SEC. 1834. If any person shall be guilty of betting any money, or any valuable thing, on any game of brag, bluff, poker (xx), seven-up, three-up, twenty-one, vintgun, thirteen cards, the odd trick, forty-five, whist, or at any other game at cards known by any name now known to the laws, or with any other or new name, or without any name, he shall, on conviction, be fined in any sum not less than ten dollars nor more than twenty-five dollars (*). *Rev. Stat., chap. 44, div. 6, art. 3, secs. 1-8.*

SEC. 1835. If any person shall be guilty of betting any money, or any valuable thing, on any game of hazard or skill, he shall, on conviction, be fined in any sum not less than ten dollars nor more than twenty-five dollars.

SEC. 1836. In prosecuting under the preceding section it is sufficient for the indictment to charge that the defendant bet money or other valuable thing on a game of hazard or skill, without stating with whom the game was played. *Act Jan. 22, 1855.*

SEC. 1837. When it shall come to the knowledge of any peace officer that any person is guilty of any of the offenses aforesaid, it shall be his duty to give notice thereof to any judge or magistrate in the county, who shall issue his warrant and cause such offender to be brought before him; and it shall be the duty of the judge or magistrate to examine the matter in a summary manner, and to discharge, bail or commit the offender, as the circumstances and the right of the case may require.

SEC. 1838. Whenever any judge, justice of the peace, sheriff, coroner or constable shall deem it necessary, they, or either of them, are hereby authorized to summon any militia officer and as many militia men as they shall deem necessary or competent to assist in enforcing the provisions of this title.

SEC. 1839. Every militia officer or militia man so summoned, failing or refusing to aid and assist therein, shall forfeit and pay, for the use of the school fund, as well as for the officer summoning such delinquent, a sum not less than ten dollars nor more than one hundred dollars, to be recovered in the name of the county, and to be paid, when collected, one-half to the school fund and the other half to the officer summoning such delinquent; and execution shall issue on such judgment as in case of debt.

(xx) See *Flynn v. State*, 34—441; *State v. Jeffrey*, 33—136.

(*) An indictment for gaming need not allege the names of the parties playing the game if known, nor the grand jury's ignorance of their names if not known. *Goodman v. State*, 41—228. As to when a participant in the game is a competent witness, see *Robinson v. State*, 41—400.

SEC. 1840. The judges of the several courts in this state shall, in their constructions of the statutes prohibiting gaming, construe the same liberally, with a view of preventing persons from evading the penalty of the law, by changings of the name, or the invention of new names or devices, that now are, or may hereafter be brought into practice in any and in all kinds of gaming, and all general terms of description shall be so construed as to have effect and to include all such games and devices as are not specially named, and in all cases when construction is necessary it shall be in favor of the prohibition and against the offender. *Rev. Stat., chap 44, div. 6, art. 3, secs. 9-13.*

SEC. 1841. Every person who shall make any bet or wager upon the result of any general or special election in this state shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than fifty dollars. *Act Feb. 21, 1859.*

KENO (*).

SEC. 1842. If any person or persons shall set up or exhibit, or cause to be set up or exhibited, or aid or assist in setting up or exhibiting, in any county, city or town in the state, any gaming device commonly known and designated as "keno," or any device similar thereto, by any other name or without a name, each person so setting up or exhibiting such device, or aiding or assisting in exhibiting or setting up such device, shall be guilty of a misdemeanor, and on indictment and conviction before the circuit court, or on conviction before a justice of the peace, shall be fined in any sum not less than two hundred dollars.

SEC. 1843. It shall be the duty of each prosecuting attorney in this state who knows or is informed of any person or persons exhibiting or setting up, or aiding or assisting in setting up, any device described in the preceding section in his circuit to take immediate steps to have such person or persons immediately arrested for trial, and such prosecuting attorney shall have such person or persons arrested as above provided for each separate offense done or committed on every separate day.

SEC. 1844. It shall be the duty of every justice of the peace knowing or being informed of any violation of section 1842 in his township, for which the parties have not been arrested or tried under the provisions of this act, to cause the arrest and trial of the person or persons so offending for each separate offense done or committed against the provisions of this act.

SEC. 1845. If any justice of the peace who knows or is informed of any violation of section 1842 in his township shall refuse or neglect to cause the arrest and trial of the person or persons so violating the same within five days next after he is informed of the same, he shall be guilty of a misfeasance in office, and, on indictment and conviction therefor, he shall be by the circuit court removed from office.

SEC. 1846. If any prosecuting attorney who knows or is informed of any violation of this act shall refuse or neglect to cause the arrest and trial of such person so offending within five days next after he knows or is informed of the same, he shall, on indictment and conviction, be fined in any sum not less than five hundred dollars.

(*) See *Stephen Trimble v. State*, 27—355; *Portis v. State*, *Id.*, 360; *State v. Lindsay*, 34—372.

SEC. 1847. No license granted by any city or town shall be a bar to any prosecution or conviction under the provisions of this act, or any excuse, protection or justification for any justice of the peace or prosecuting attorney failing to carry out the same. *Act March 10, 1877.*

DEALING IN FUTURES.

SEC. 1848. The buying or selling or otherwise dealing in what is known as futures, either in cotton, grain or anything whatsoever, with a view to profit, is hereby declared to be gambling.

SEC. 1849. Whoever shall so engage in dealing in futures in any capacity whatsoever in this state shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than two hundred and fifty dollars and not more than five hundred dollars, and for the second offense, in addition to the penalty above prescribed, such offender shall, upon conviction, be imprisoned in the county jail for the period of thirty days. *Act March 30, 1883.*

XXXIX.—OFFENSES AGAINST THE RIGHT OF SUFFRAGE (*).

SECTION

1850. Dram-shops to be closed on day of election.
1851. Fraud, etc., by officers, and illegal voting, a felony.
1852. Misbehavior of judge or clerk of election.

SECTION

1853. Punishment of judge for putting false ballot in box.
1854. Penalty for deceiving elector, etc.
1855. Altering or erasing ballot.

SECTION 1850. All dram-shops and drinking-houses in any county, city, town or township shall be closed during the day of any election held therein, and the succeeding night, and any person selling or giving away any intoxicating liquors during said day or night in any county, city, town or township in which any such election may be held shall be punished by a fine of not less than two hundred dollars for each and every offense, or imprisoned not less than six months, or both. *Act Jan. 23, 1875, sec. 22.*

SEC. 1851. Any election officer who shall fraudulently and corruptly permit any person to vote illegally, or refuse the vote of any qualified elector, cast up or make a false return of said election, or any person who shall vote when not a qualified elector, or vote more than once, or bribe any one to vote contrary to his wishes, or intimidate or prevent any elector by threats, menace or promises from voting, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years.

SEC. 1852. If any judge or clerk of any election, or any other person concerned in the conducting of any election, shall neglect, improperly delay or

(*) Any person who shall be convicted of fraud, bribery or other willful and corrupt violation of any election law of this state shall be adjudged guilty of a felony, and disqualified from holding any office of trust or profit in this state. *Art. III, sec. 6, Const.*

For other offenses committed by violating the election laws, see SECS. 2658, 2678, 2692, 2701.

refuse to perform any of the duties required by law, having undertaken to do so, or shall be guilty of corruption, partiality or manifest misbehavior in any matter or thing appertaining to such election, or shall unduly attempt to influence the election, he shall forfeit and pay the sum of two hundred dollars, to be recovered by indictment, or by action of debt, in the name of any person who may sue for the same.

SEC. 1853. Any judge of the election who shall, after proclamation made of the opening of the polls, put a ballot into the ballot-box, except his own ballot, or such as may be received by him in the regular discharge of his duty, shall, on conviction thereof, be punished as provided in section 1851.

SEC. 1854. Any person who shall furnish any elector who can not read with a ballot, informing him that it contains a name or names different from those which are written or printed thereon, with an intent to induce him to vote contrary to his inclination, or who shall fraudulently change a ballot of any elector, by which said elector shall be prevented from voting for such candidate or candidates as he intended, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars. *Ib.*, *secs.* 20, 21, 28 and 30.

SEC. 1855. Every person who shall alter, change or erase the ballot of any voter, against or without his consent and knowledge, either before or after such ballot shall have been deposited in the ballot-box, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty dollars. *Act Feb. 21, 1859, sec. 3.*

XL.—OFFENSES BY TAVERN AND GROCERY-KEEPERS.

SECTION

1856. Permitting gambling.

1857. quarreling, etc.

SECTION

1858. Selling liquor to soldiers.

1859. Other violations of duty prescribed by law.

SECTION 1856. If any person having a license to keep a tavern or dram-shop shall knowingly permit any person to play at any game of cards, dice or other gaming device within his house, outhouse, curtilage or inclosure, he shall be deemed guilty of a misdemeanor, and, on conviction, in addition to the punishment prescribed by law for such offense, his license shall be canceled (yy).

SEC. 1857. If any tavern-keeper, or grocery or dram-shop keeper, shall permit any quarreling, fighting or other disorderly conduct in his tavern or grocery, he shall be deemed guilty of keeping a disorderly house, and, on conviction, his license shall be canceled, and he shall be fined in any sum not exceeding fifty dollars.

SEC. 1858. Any person keeping a tavern or grocery, for the retail of ardent spirits in quantities less than one quart, who shall sell or give any vinous or ardent spirits to any regular soldier of the United States army, without the consent of an officer of the army, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding one hundred dollars, and his license canceled.

(yy) This section does not prohibit the playing of games for amusement or recreation at taverns or dram-shops. *Ausley v. State*, 36—67. See *Brockway v. State, Ib.*, 6:29.

SEC. 1859. If any person shall violate any of the provisions of the law requiring tavern-keepers to procure license for which no specific penalty is provided, such person shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding fifty dollars (zz). *Rev. Stat. chap. 148.*

XLI.—VIOLATION OF ESTRAY LAWS.

SECTION

1860. Failing to advertise, penalty.

SECTION

1861. Disposing of or killing, penalty.

SECTION 1860. If any person shall fail to advertise any estray according to law, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than five dollars nor more than fifty dollars, to be recovered in the county where such estray may have been taken up. *Act Dec. 24, 1842.*

SEC. 1861. Any person who shall sell, exchange or dispose of any animal taken up as an estray in any manner, or kill any neat cattle, hogs or sheep, until after the expiration of the time that the owner has the right to prove his property in the same, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than half nor more than double the appraised value of any such estray so taken up, to be recovered in the county where such estray may have been taken up. *Rev. Stat., chap. 58, sec. 21, and act Dec. 24, 1842.*

XLII.—DRIVING STOCK FROM USUAL RANGE.

SECTION

1862. Without consent of owner a misdemeanor; punishment.

SECTION 1862. Any person who shall drive or remove from their usual range, without the consent of the owner or person having the right to control the same, any cattle, horses, sheep, hogs or other stock shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than fifty dollars, for the use of the county where said offense may be committed. *Act March 1, 1877.*

(zz) As to form of indictment for keeping a tavern without having first procured a license, see *State v. Adams*, 16—497.

XLIII.—OFFENSES AGAINST ROAD LAW (aaa).

SECTION

1863. Overseers, list of, to be furnished grand jury.

SECTION

1864. Overseers, penalty for neglect of duty.

SECTION 1863. It shall be the duty of the clerk of the county court, at each regular term of the circuit court, to furnish the grand jury with a list of the names of all the overseers of roads in the county, with the name and number of the district assigned to each overseer; and it shall be the duty of the grand jury to inquire into the condition of the roads, or parts of roads, in each road district assigned to each overseer.

SEC. 1864. If the overseer in any road district shall fail to keep the roads in said district in good repair, or shall fail to erect and keep in repair guide-posts as required by law, or shall fail to report such persons as shall fail, refuse or neglect to perform any act or duty required of them by the road law, he shall, upon conviction thereof, be fined in any sum not less than one nor more than twenty-five dollars (bbh). *Act March 23, 1871, secs. 39, 40, 41.*

XLIV.—OBSTRUCTING HIGHWAYS, INJURING BRIDGES, ETC.

SECTION

1865. Obstructing public roads a misdemeanor, exception.

SECTION

1866. Injuring bridges, etc., how punished.
1867. Removing mile-stones, etc., how punished.

SECTION 1865. If any person shall obstruct any public road by felling any tree or trees across the same, or placing any other obstruction therein, he shall be guilty of a misdemeanor, and liable to indictment in the circuit court of the proper county, and, on conviction thereof, be fined in any sum not exceeding fifty dollars (ccc), and shall forfeit two dollars for every day he shall suffer such obstruction to remain after he shall have been notified to remove the same by the overseer. *Provided*, this shall not extend to any person who may cut down any timber for rails, wood or other lawful purpose who shall immediately remove the same out of the road, or to any person who shall dig a ditch or drain across such road on his own lands, and who keeps the same in repair.

SEC. 1866. If any person shall willfully injure or destroy any bridge or crossway, or remove any of the planks or timber therefrom, or destroy or deface any guide-post on a public road, every person so offending shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding fifty dollars. *Act Dec. 4, 1874.*

(aaa) For obstructing highways, injuring bridges, etc., see SECS. 1865-1867.

For overseer's failure to pay over or account for money collected by him as such, see SEC. 1644. For other offenses against the road law, see SEC. 5907.

(bbb) Parol evidence that an overseer acted as such is admissible to prove his acceptance of the appointment. *State v. Stroope*, 20—202. See also *State v. Hester*, 21—193. The state must prove the road is a public road as defined by the statute. *State v. Moore*, 23—530. An order of the county court appointing an overseer for a particular road or district is evidence that, during the term of the appointment, the road described is a public road. *Id.*; *State v. Hagood*, *Id.*, 553. The description of the road is material, and must be proved as alleged. *Dormar v. State*, 31—49.

(ccc) It is an indictable offense for one to change a public road running across his land without authority of the county court. *McKibbin v. State*, 40—480. See *State v. Lemay*, 13—405; *Sanders v. State*, 18—198.

SEC. 1867. Any person who shall willfully and maliciously break, destroy or remove any mile-stone, post or any guide-board, erected by authority of law, on any public highway, or shall deface or alter any inscription on any such post, stone or board, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than ten dollars. *Rev. Stat., chap. 44, div. 4, art. 9, sec. 7.*

XLV.—HORSE-RACING.

SECTION

1868. On highway or street, how punished.

1869. Inducing a minor to ride in, a misdemeanor.

SECTION

1870. Near church, school-house or highway; punishment; exception.

SECTION 1868. If any person shall be engaged, directly or indirectly, in running a horse, by way of practicing him, or in running a horse-race on a public highway, or on the street of any town or city, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, he shall be fined in any sum not less than ten nor more than twenty dollars.

SEC. 1869. If any person shall induce or accept of any minor or apprentice, without the consent of the parent or guardian of such minor or apprentice, to ride in a race or to practice any horse to run, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than ten nor more than fifty dollars.

SEC. 1870. If any person shall be engaged in running a horse-race, on a bet or wager, or for sport or pastime, with or without such bet or wager, within one-fourth of one mile of any church or school-house, or any public road or highway, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than ten nor more than twenty-five dollars. *Provided*, that the provisions of this section shall not apply to any regular inclosed race-course or racing park. *Act Nov. 5, 1875, secs. 1, 2 and 3.*

XLVI.—VAGRANTS.

SECTION

1871, 1872. Vagrants, who are.

1873. When justice to issue warrants.

1874. Trial and judgment.

SECTION

1875. Trial and judgment in case of minors.

1876. Sheriffs and constables, duty of.

1877. Grand jury, duty of.

SECTION 1871. Every able-bodied person who shall be found loitering or rambling about, not having any visible means of maintaining himself, and who doth not betake himself to labor or some honest calling to procure a livelihood, and all able-bodied persons who are found begging, and who quit their houses and leave their wives and children without the means of subsistence, shall be deemed and treated as vagrants.

SEC. 1872. All keepers or exhibitors of any gaming table, bank or other gambling device, and all persons who travel or remain in steamboats, or go

about from place to place for the purpose of gaming, shall be deemed and treated as vagrants.

SEC. 1873. Where any such person is found, any justice of the peace of the county shall, upon information or from his own knowledge, issue his warrant to the sheriff or any constable of the county to bring such person before him (†).

SEC. 1874. If, upon due examination, it shall appear to such justice that such person is a vagrant, and the fact being ascertained by a jury, which shall, in all cases, be summoned and sworn to inquire whether the person be a vagrant or not, he shall order him to be committed to the common jail of the county for any term not less than thirty nor more than ninety days, one-half of such time to be fed on bread and water alone.

SEC. 1875. If such vagrant be a minor, the justice shall commit him to jail, unless he enter into recognizance, with good and sufficient security, to appear at the next term of the circuit court, and, on the appearance of such minor, it shall be the duty of the court to bind him apprentice to some useful trade or occupation until he arrives at the age of twenty-one years, and such vagrant minor shall, in all respects, be subject to the laws regulating apprentices.

SEC. 1876. All sheriffs and constables, within their respective counties, shall give information to some justice of the peace of all vagrants that may from time to time come within their knowledge.

SEC. 1877. The grand jury impaneled for any county shall make presentment of all persons within the county whom they may suspect to be vagrants, and, upon such presentment, the circuit court shall direct some justice of the peace of the county to issue his warrant to bring such suspected person before him, and proceed with him as in this act directed. *Rev. Stat., chap. 154.*

XLVII.—SELLING SPIRITUOUS LIQUORS TO MINORS AND INDIANS.

SECTION

1878. Selling to minors.

SECTION

1879. Selling to Indians.

SECTION 1878. Any person who shall sell, either for himself or another, or be interested in the sale of any ardent, vinous, malt or fermented liquors, or any compound or preparation thereof, called tonics, bitters or medicated whisky, to any minor, without the written consent or order of the parent or guardian, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than fifty nor more than one hundred dollars (ddd). *Act March 8, 1879, sec. 19.*

SEC. 1879. If any person shall sell, exchange, give, barter or dispose of any spirituous liquors or wine to an Indian, on conviction thereof, he shall be fined in any sum not less than one nor more than five hundred dollars. *Act Jan. 15, 1857.*

(†) See art. VII, sec. 28; *Const.*; *Brizzolari v. State*, 37—364.

(ddd) One who sells liquor to a minor without the written consent of his parent or guardian violates this section, although he is informed and believes at the time that he is of full age; but an honest mistake as to his age will mitigate the penalty. *Redmond v. State*, 36—58; *Crampton v. State*, 37—108; *Edgar v. State*, *Ib.*, 219; *Pounders v. State*, *Ib.*, 399. A partner in a saloon or dram-shop is criminally liable for an illegal sale of

XLVIII.—PROFANITY.

SECTION

1880. Profanity in presence of court.
1881. In presence of judge or justice.

SECTION

1882. Profanity, when offender to be committed.

SECTION 1880. Every person who shall profanely swear or curse shall forfeit one dollar for every offense. If the offense be committed in the presence and hearing of any justice of the peace, mayor or judge, while holding a court, the offender shall be forthwith fined by the magistrate or judge without any other proof whatever.

SEC. 1881. If, at any time whatever, the offense of profane cursing and swearing be committed in the presence of any such justice, mayor or judge, such magistrate or judge may, in his discretion, fine the offender in a summary manner, without further proof, in any sum not less than five dollars.

SEC. 1882. If the offender do not forthwith pay the penalty incurred, with the cost, or give security for the payment of the same within six days, he shall be committed to jail for every such offense, or any number of offenses whereof he was convicted at the same time, for not less than one day nor more than three days. *Act April 12, 1869.*

XLIX.—SABBATH-BREAKING (eee).

SECTION

1883, 1884. Laboring on Sunday.
1885. Exceptions.
1886. What persons not subject to penalties.
1887. Keeping open store or selling goods on Sunday.
1888. Charity or necessity. justification.

SECTION

1889. Cock-fighting, etc.
1890. Playing cards on Sunday.
1891. Hunting on Sunday.
1892. When parent or guardian liable.
1893. Horse-racing.

SECTION 1883. Every person who shall, on the Sabbath or Sunday, be found laboring, or shall compel his apprentice or servant to labor or to perform other services than customary household duties, of daily necessity, comfort or charity, on conviction thereof, shall be fined one dollar for each separate offense (fff).

SEC. 1884. Every apprentice or servant compelled to labor on Sunday shall be deemed a separate offense of the master.

SEC. 1885. The provisions of this act shall not apply to steamboats and other vessels navigating the waters of the state, nor to such manufacturing establishments as require to be kept in continual operation.

liquor by his co-partner to a minor, though he was absent at the time of the sale and had no knowledge of it. *Robinson & Warren v. State*, 38—641; *Cloud v. State*, 36—151; *Waller v. State*, 38—656. The burthen of proving the consent of parent or guardian is on the seller. *Edgar v. State*, 37—219. Such consent must be in writing. *Hill v. State*, *Id.*, 395. See *Pounders v. State*, *Id.*, 399. An indictment must negative consent of parent or guardian. *State v. Emerick*, 35—324. The word "minor" sufficiently describes the age of the person to whom the liquor was sold. *Waller v. State*, 38—656.

(eee) The institutions of the Christian religion are entitled to profound respect, and may well be protected by law. *Shover v. State*, 10—259.

(fff) That the defendant's grain was wasting from over-ripeness is no defense to an indictment for Sabbath-breaking. *State v. Goff*, 20—289.

SEC. 1886. Persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath or Sunday shall not be subject to the penalties of this act, so that they observe one day in seven, agreeably to the faith and practice of their church or society.

SEC. 1887. Every person who shall, on Sunday, keep open any store or retail any goods, wares or merchandise, or keep open any dram-shop or grocery, or sell or retail any spirits or wine, shall, on conviction thereof, be fined in any sum not less than ten dollars nor more than twenty (ggg).

SEC. 1888. Charity or necessity on the part of the customer may be shown in justification of the violation of the last preceding section.

SEC. 1889. Every person who shall, on the Christian Sabbath or Sunday, be engaged in the running of any single horse, for any bet or wager on the speed of such horse, or for pastime, or for amusement, without any bet or wager (*), or shall be engaged in any cock fight, on any bet or wager, or for pastime, without bet or wager, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars, nor less than twenty dollars. *Rev. Stat., chap. 44, div. 7, art. 2.*

SEC. 1890. Every person who shall, on the Christian Sabbath or Sunday, be engaged in any game of brag, bluff, poker, seven-up, three-up, twenty-one, vingtun, thirteen cards, the odd trick, forty-five, whist, or at any other game at cards known by any name now known to the laws, or with any other new name, for any bet or wager on such games, or for amusement, without any bet or wager, shall, on conviction thereof, be fined in any sum not less than twenty-five dollars nor more than fifty dollars (hhh). *Act Jan. 12, 1853.*

SEC. 1891. If any person shall be found hunting with a gun, with intent to kill game, or shooting for amusement on the Sabbath day, on conviction thereof, he shall be fined in any sum not less than five nor more than twenty-five dollars for each separate offense. *Act Jan. 19, 1855.*

SEC. 1892. If such offense should be committed by a minor, under the age of twenty-one years, and it shall be made appear that the offense was committed by or with the consent or approbation of the parent or guardian of said minor, then such parent or guardian, as aforesaid, shall also be fined according to the provisions of section 1891. *Ib., sec. 2.*

SEC. 1893. If any person shall be engaged in running a horse-race on the day known as the Christian Sabbath or Sunday, on a bet or wager, or for sport or pastime, with or without such bet or wager, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than twenty-five nor more than one hundred dollars. *Act Nov. 5, 1875, sec. 4.*

(ggg) See *Shover v. State*, 10—259; *Brittin v. State, Ib.*, 299; *Bennett v. State*, 13—694; *State v. Parnell*, 16—506; *Blahut v. State*, 34—447. One keeping a saloon open on Sunday is guilty, whether he is the owner or proprietor or not. If a clerk or servant in the saloon, and serving in it as such, when the door is open on Sunday, he is a participant in the offense. *Marre v. State*, 36—222. Alcohol is embraced in any one of the terms, "goods, wares or merchandise," as used in this section. *Bridges v. State*, 37—224. It is necessary to prove the offense on some Sabbath within twelve months before the prosecution, but proof of any particular Sabbath is not necessary. *Marre v. State*, 36—222. The indictment must show the offense was committed on some Sunday, though the particular Sunday is not important. *Robinson v. State*, 38—548.

(*) See SEC. 1893.

(hhh) It is not necessary in an indictment, under this section, for playing cards on Sunday to allege that the game was played for amusement, or that the defendant bet upon the game. *Stockden v. State*, 18—186. Nor is it necessary to state the name of the game. *State v. Jeffrey*, 33—136.

L.—DISTURBING RELIGIOUS CONGREGATIONS— INJURING CHURCHES, ETC.

SECTION

1894. Disturbing congregation defined; penalty.
1895. Malicious injury to church, etc.

SECTION

1896. Selling spirits within one mile of camp-ground.
1897. Exception.

SECTION 1894. If any person shall maliciously or contemptuously disturb or disquiet any congregation or private family, assembled in any church or other place for religious worship, or persons assembled for the transaction of church business, by profanely swearing, or using indecent gestures, or threatening language, or committing any violence of any kind to or upon any person so assembled, or by using any language, or acting in any manner that is calculated to disquiet, insult or interrupt said congregation, he shall, upon conviction thereof, be fined in any sum not less than twenty nor more than fifty dollars (iii). *Rev. Stat., chap. 44, div. 7, art. 3, sec. 1, and act Jan. 10, 1857.*

SEC. 1895. If any person shall willfully and maliciously injure or destroy any church, meeting-house or camps on any camp-ground used for public worship, or any furniture appertaining thereto, upon conviction thereof, he shall be fined in any sum not less than twenty nor more than fifty dollars; and, in addition to the fine, the jury shall assess the damages sustained by any such religious congregation or society, and the court shall enter judgment against such offender, in favor of such congregation or society, for double the damages so found by the jury.

SEC. 1896. If any person shall contemptuously offer for sale any ardent, vinous or other drinks within one mile of any camp-ground during camp-meeting, or within one mile of the place of meeting for religious worship of any Christian denomination, he shall, upon conviction thereof, be fined in any sum not less than ten dollars.

SEC. 1897. The prohibition in the preceding section shall not extend to any regularly licensed tavern-keeper or grocer previously doing business within one mile of any such camp-ground. *Rev. Stat., chap. 44, div. 7, art. 3, secs. 2-4.*

LI.—OBSCENITY.

SECTION

1898. Indecent exposure of person.
1899. Exhibiting obscene picture.

SECTION

1900. Punishment.
1901. Vulgarity or threats at domicile of another.

SECTION 1898. Every person who shall appear in public places naked, or partly so, with the intent of making a public exhibition of his nudity, or who shall make any obscene exhibition of his person shall be deemed guilty of a misdemeanor.

(iii) See *State v. Ralliff*, 10—530; *State v. Minyard*, 12—156; *Fletcher v. State*, *Id.*, 169; *Stratton v. State*, 13—688; *State v. Horn*, 19—578. As to form of indictment under this section, see *State v. Hinson*, 31—638.

The disturbance of any member of a congregation assembled for religious worship is, in law, a disturbance of the congregation. *State v. Wright*, 41—410.

SEC. 1899. Every person publicly exhibiting any obscene or indecent pictures or figures shall be deemed guilty of a misdemeanor.

SEC. 1900. Every person convicted under the provisions of the two preceding sections shall be fined in any sum not less than fifty dollars. *Rev. Stat., chap. 44, div. 6, art. 2.*

SEC. 1901. Whoever shall go to the domicile or usual place of abode of any person, or who, being at the domicile or usual place of abode of any person, shall utter and publish vulgar or profane language, or shall make any vulgar exhibition in the presence of any person then and there being, or shall make violent threats (*) against any person usually dwelling at such place, with intent to insult or terrify any person whomsoever, shall, on conviction thereof, be fined in any sum not less than twenty nor more than two hundred dollars. *Act Feb. 8, 1859.*

LII.—VIOLATING THE GRAVE.

SECTION

1902. Removing dead body from grave.

1903. Purchasing disinterred body.

1904. Opening grave with intent to steal coffin, etc.

SECTION

1905. Punishment.

1906. Exception.

SECTION 1902. Every person who shall remove the dead body of any human being from the grave or other place of interment, for the purpose of stealing the same, or for the purpose of dissection, or from mere wantonness, shall be deemed guilty of a misdemeanor.

SEC. 1903. Every person who shall purchase or receive the dead body of any human being, knowing the same to have been disinterred contrary to law, shall be deemed guilty of a misdemeanor.

SEC. 1904. Every person who shall open a grave or other place of interment, with the intent to remove the dead body of any human being for the purpose of selling the same, or for the purpose of stealing the coffin, or any part thereof, or the vestments or other articles interred with any dead body, shall be deemed guilty of a misdemeanor.

SEC. 1905. Persons convicted of any offense specified in the three preceding sections shall be fined in any sum not less than one hundred dollars and be imprisoned not less than six months in the county jail.

SEC. 1906. Nothing in this title contained shall extend to the case of the bodies of persons executed under the criminal laws of this state (†). *Act April 12, 1869.*

(*) See SECS. 1800, 1802.

(†) See SECS. 2552-2555.

LIII.—CARRYING WEAPONS.

SECTION

1907. Of what kind prohibited; exceptions.
 1908. Weapons excepted, how to be carried; unlawful carrying a misdemeanor.
 1909. Sale of weapons a misdemeanor; exception.
 1910. Unlawful sale or carrying, how punished.

SECTION

1911. Justices failing to proceed against offenders, how punished.
 1912. Officer failing to make arrest, how punished.
 1913. In what courts offenders to be prosecuted.

SECTION 1907. Any person who shall wear or carry in any manner whatever as a weapon any dirk or bowie knife, or a sword, or a spear in a cane, brass or metal knucks, razor, or any pistol of any kind whatever, except such pistols as are used in the army or navy of the United States (jjj), shall be guilty of a misdemeanor. *Provided*, that officers whose duties require them to make arrests, or to keep and guard prisoners, together with the persons summoned by such officers to aid them in the discharge of such duties, while actually engaged in such duties, are exempted from the provisions of this act. *Provided, further*, that nothing in this act be so construed as to prohibit any person from carrying any weapon when upon a journey or upon his own premises (*).

SEC. 1908. Any person, excepting such officers or persons on a journey and on their premises as are mentioned in section 1907, who shall wear or carry any such pistol as is used in the army or navy of the United States, in any manner except uncovered and in his hand, shall be deemed guilty of a misdemeanor (kkk).

SEC. 1909. Any person who shall sell, barter or exchange, or otherwise dispose of, or in any manner furnish to any person, any dirk or bowie knife, or a sword or a spear in a cane, brass or metal knucks, or any pistol of any kind whatever, except such as are used in the army or navy of the United States, and known as the navy pistol, or any kind of cartridge for any pistol, or any person who shall keep any such arms or cartridges for sale, shall be guilty of a misdemeanor.

SEC. 1910. Any person convicted of a violation of any of the provisions of this act shall be punished by a fine of not less than fifty nor more than two hundred dollars.

SEC. 1911. Any justice of the peace in this state, who, from his own knowledge or from legal information, knows, or has reasonable grounds to believe, any person guilty of a violation of the provisions of this act, and shall fail or refuse to proceed against such person, shall be deemed guilty of a non-feasance in office, and, upon conviction thereof, shall be punished by the same fine and penalty provided in section 1910, and shall be removed from office (*).

SEC. 1912. Any officer in this state whose duty it is to make arrests, who may have personal knowledge of any person carrying arms contrary to the pro-

(jjj) See *Wilson v. State*, 33—557; *Holland v. State*, *Ib.*, 560.

(**) An indictment need not negative the exceptions. *Walker v. State*, 35—386.

(kkk) SECS. 1907 and 1908 are not unconstitutional. *Haile v. State*, 38—364.

(*) See *State v. Graham*, 38—519.

visions of this act, and shall fail or refuse to arrest such person and bring him to trial, shall be punished as provided in section 1910.

SEC. 1913. All persons violating any of the provisions of this act may be prosecuted in any of the courts of this state having jurisdiction to try the same. *Act April 1, 1881.*

LIV.—SELLING LOTTERY TICKETS (*).

SECTION

1914. Keeping office for, a misdemeanor; punishment.

SECTION

1915. Sale of lottery, gift concert tickets, etc., a misdemeanor; punishment.

SECTION 1914. Any person who shall hereafter keep an office, room or place for the sale or disposition of lottery tickets, gift concert tickets or like devices shall be deemed guilty of a misdemeanor and liable to indictment, and, on conviction for such offense, shall be fined in a sum not less than fifty dollars nor more than five hundred dollars, with costs of prosecution.

SEC. 1915. Any person who shall vend, sell or otherwise dispose of any lottery ticket, gift concert ticket or like device shall be deemed guilty of a misdemeanor and liable to indictment, and, on conviction thereof, shall be fined in a sum not less than fifty dollars nor more than five hundred dollars. *Act Feb. 17, 1875.*

LV.—ENTICING MINORS FROM PARENTS OR GUARDIANS.

SECTION

1916. A misdemeanor.

SECTION

1917. Punishment.

SECTION 1916. It shall be unlawful for any person to persuade or entice any minor from his parents or guardian, or to secrete any minor when persuaded or enticed from his parents or guardian.

SEC. 1917. Any person violating the provisions of the foregoing section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than ten nor more than fifty dollars, or imprisoned for not less than thirty nor more than ninety days, or both, at the discretion of the court. *Act March 6, 1875.*

(*) See art. XIX, sec. 14, *Const.*

LVI.—UNLAWFUL SALE OF COTTON.

SECTION

1918. Sale of cotton, between what hours prohibited.

SECTION

1919. Punishment.

1920. On proof of ownership, vendor to be acquitted.

SECTION 1918. It shall be unlawful for any person to buy or sell cotton, in the seed or lint, between the hours of sunset and sunrise.

SEC. 1919. Any person violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed six months.

SEC. 1920. Any person selling the article specified in section 1918, within the specified hours, who may be able to prove by a competent witness that he is the rightful owner of the article sold, shall not be held guilty of violating the provisions of this act. *Act Dec. 14, 1875.*

LVII.—TAKING OR DESTROYING FISH.

SECTION

1921. Taking fish from pond without consent of owner a misdemeanor; punishment.

1922. Owner of pond must give notice, etc.

1923. Unlawful to kill by explosives or drugs, etc.

SECTION

1924. Owners of dams to permit passage of fish; exceptions.

1925. Punishment for violations, etc.

SECTION 1921. If any person shall take fish from any inclosed or artificial lake or pond belonging to any other person, without the consent of the owner, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of one hundred dollars, or be imprisoned in the county jail not more than thirty days.

SEC. 1922. Before any person shall have the benefit of the preceding section, he shall first give notice of his intention to breed or cultivate fish in said inclosed or artificial lake or pond; he shall post up three or more notices in the precinct of said inclosed or artificial lake or pond of his intention, warning all persons not to take fish from the same. *Act Feb. 16, 1875.*

SEC. 1923. It shall be unlawful for any person, with the intent to kill, maim or paralyze any fish or other water animal, to cast, drop or otherwise deposit in any river, creek, lake or pond, or in any other stream or body of water within this state, any explosive material or substance, or any intoxicating or stupefying liquid, drug, vegetable or fruit, or to take from any river, creek, lake, pond or other stream or body of water within this state, any fish so stupefied, intoxicated or killed.

SEC. 1924. Any person owning or controlling any dam or other obstruction across any river, creek or other water-course is hereby required to keep such dam or other obstruction open sufficiently to admit of the free and easy passage of all fish either ascending or descending such river or other water-

course from the first day of March until the first day of June of each year. *Provided*, that this section shall not apply to dams constructed for the accommodation of water-power for mills and manufactories.

SEC. 1925. Any person found guilty of violating either of the provisions of sections 1923 and 1924, upon indictment in the circuit court or before a justice of the peace of the proper county, shall be fined for each offense not less than five nor more than twenty-five dollars. *Act March 12, 1879.*

LVIII.—CLANDESTINE SALE OF INTOXICATING LIQUORS (*).

SECTION

1926. Keeping "blind tiger" a misdemeanor.
 1927. *Prima facie* evidence of guilt, what shall be.
 1928. Duty of ministerial, executive and judicial officers.
 1929. Duties of prosecuting attorney, justices, etc.

SECTION

1930. Search for liquors, when and where made.
 1931. No warrant to search dwelling, except when.
 1932. Punishment; exceptions.
 1933. Judgments, how enforced, fees, etc.
 1934. Statute not to interfere with lawful business, etc.

SECTION 1926. Any person owning or using or controlling any house or tenement of any kind who shall sell or give away, or cause or allow to be sold or given away, or keep or allow to be kept for sale or to be given away, any alcohol, ardent or vinous spirits or malt liquors, or any compound or tincture commonly called bitters or tonics, whether the same be sold or given away openly or secretly, by such device as is known as "the blind tiger," or by any other name or under any other device, shall be deemed guilty of a misdemeanor.

SEC. 1927. If any person shall obtain any such alcohol, ardent or vinous spirits, or malt liquors, or any compound or tincture commonly called bitters or tonics, in any house, room or tenement so owned, occupied or controlled by another, by going therein or thereto, and by call, sound, word or token, it shall be *prima facie* evidence of the guilt of the person who so owns, occupies or controls such house, room or tenement; or if any persons are allowed to pass through or into any room or place so owned or controlled or occupied by another and there obtain such alcohol, ardent or vinous spirits or malt liquors, or any compound or tincture commonly called bitters or tonics, it shall be deemed presumptive evidence of the guilt of the party who owns, controls or occupies such house or room.

SEC. 1928. It shall be the duty of all ministerial, executive and judicial officers to faithfully enforce the provisions of this act; and it shall be the duty of prosecuting attorneys to prosecute under this act, and to appoint deputies in each county of their respective districts to prosecute for the state in their absence.

SEC. 1929. Whenever any person shall file with any justice of the peace, or the mayor of any town or city, a statement, under oath, that he has reason to believe, and does believe, that the person named in the affidavit has vio-

(*) See chap. 98.

lated any of the provisions of this act, it shall be the duty of the prosecuting attorney, or the attorney so appointed to represent him, or the state, to file an information before said justice of the peace or mayor, who shall issue thereon a writ for the arrest of the person so charged and take him before the officer issuing such writ for trial (*).

SEC. 1930. If the person making the affidavit shall state the house, room or place in which he believes the things herein prohibited are sold or given away, the officer to whom the writ is delivered shall forthwith enter such house and the different rooms and apartments therein, whether opened or closed, whether by day or night, and search for such spirits or liquors (†), and if any be found therein, or a United States license to sell such liquors, it shall be *prima facie* evidence of the guilt of the party owning or controlling the house, and if he find any person else in charge of such liquors he shall arrest him also and bring him before the officer issuing the writ for trial.

SEC. 1931. No warrant shall be issued to search a dwelling-house, occupied as such, unless it or some part of it is used as an inn, or shop or for purposes of traffic, or unless the magistrate, before whom the complaint shall be made, is satisfied by evidence presented to him, and so alleges in said warrant, that intoxicating liquor is kept in such house or its appurtenances, and that said liquor is intended for sale in violation of law.

SEC. 1932. Any and all persons who may or shall be convicted of violating this law shall be fined in any sum not less than two hundred dollars, and not more than five hundred dollars, for each and every offense, and be imprisoned for thirty days (**). *Provided*, this act shall not apply to any person giving away spirituous liquors or wines to friends upon his own resident premises with no view to profit (††), nor to any person who has state and county license to sell such liquors.

SEC. 1933. The prosecuting attorney shall have like fees, and the judgments shall be enforced in like manner, as in other cases of convictions for misdemeanors.

SEC. 1934. Nothing in this act shall be so construed as to interfere with the business of those legally authorized to deal in any of the articles prohibited in this act, nor with the use of said articles in private families nor in the mechanical arts. *Act March 30, 1883.*

LIX.—OBSCENE LITERATURE.

SECTION

1935. A misdemeanor to sell or circulate; punishment.

SECTION

1936. Duty of prosecuting attorneys.

1937. Sections 1935, 1936, to be liberally construed.

SECTION 1935. The sale, circulation, or attempted circulation, or offer for sale, or keeping or exposing on news-stand or other place of sale, any obscene,

(*) For form of warrant in ordinary cases, see note (i) to SEC. 1993.

(†) As to form of warrant commanding a search, etc., see note (o) to *sub. div. 5, chap. 46*, and note (°) to SEC. 1954.

(**) But see SEC. 4511.

(††) See SECS. 4524-4527.

vulgar or indecent papers, books or periodicals of any kind, in which are illustrated any indecent or vulgar pictures, shall be a misdemeanor, and any person selling the same, or circulating the same, or attempting to circulate the same, or offering the same for sale, or keeping or exposing the same on any news-stand or other place of sale, or soliciting subscription for the same, shall be fined, on conviction, the sum of not less than one hundred and not more than three hundred dollars for the first offense, to be cognizable before any justice of the peace in the county where such offense is committed, and for the second offense not less than five hundred dollars and not more than one thousand dollars, the said second offense to be cognizable before the circuit court of the proper county on indictment or information preferred or presented according to law.

SEC. 1936. The several prosecuting attorneys of the state shall see that all legal steps are taken to enforce the provisions of this act, both before the justices and circuit courts, and any willful failure on their part shall subject said prosecuting attorneys to indictment and, upon conviction, to removal from office.

SEC. 1937. This act shall be liberally construed by the courts of this state, so as to repress and prohibit the sale, the offer for sale, the circulation or attempted circulation, the subscription or use of the obscene publications enumerated and set forth in this subdivision. *Act March 8, 1883.*

LX.—OFFENSES BY TRADERS (*).

SECTION

1938. River traders not to land or tie up without permission; punishment.

SECTION

1939. Refusing to leave bank after notice; how punished.

1940. Ownership of river bank defined.

SECTION 1938. Any river trader who shall land or tie up to the bank or border of any of the navigable streams of this state, for the purpose of trading, without having first obtained permission of the owner of such bank or border, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty nor more than one hundred dollars for each separate offense.

SEC. 1939. Any river trader that shall tie up to the bank of any navigable stream in this state without the consent of the owner of such bank, and shall refuse to leave such bank within twenty-four hours after being notified to leave by such owner or his agent, unless prevented from leaving by stress of weather or other unavoidable cause, or who refuses to leave within twenty-four hours after such causes of detention are removed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined as in the preceding section.

SEC. 1940. For the purposes of this act, it is declared that the ownership of persons owning lands bordering on the navigable streams of this state shall extend to low water mark. *Act March 6, 1875, secs. 5, 6 and 7.*

(*) See SECS. 5881-5885.

LXI.—CRUELTY TO ANIMALS.

SECTION

1941. Acts of cruelty punished as misdemeanors.
 1942. Keeping or using place to fight animals a misdemeanor.
 1943. Failure to supply impounded animals food and water a misdemeanor.
 1944. Such animals may be relieved without liability.
 1945. Cruelty in transportation of animals; proceedings on arrest for.
 1946. Promoting acts of cruelty, etc.
 1947. Selling diseased animals a misdemeanor.
 1948. Animals having glanders or farcy to be killed.

SECTION

- 1949, 1950. Society to prevent cruelty to animals; agents of may make arrests.
 1951. May destroy diseased animals, when.
 1952. May take charge of animals and vehicles, when.
 1953. No injunction to be granted against such society except on notice.
 1954. Warrant to search and make arrests, when to issue.
 1955. Killing game for food not prohibited; terms of act include what.

SECTION 1941. If any person shall overdrive, overload, torture, torment, deprive of necessary sustenance, or cruelly beat or needlessly mutilate or kill, or cause or procure to be overdriven, overloaded, tortured, tormented or deprived of necessary sustenance, or to be cruelly beaten or needlessly (III) mutilated or killed, any living creature, every such offender shall, for every such offense, be guilty of a misdemeanor (†).

SEC. 1942. Any person who shall keep or use, or in any way be connected with or interested in the management of, or shall receive money for the admission of any person to any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock or other creature, and every person who shall encourage, aid or assist therein, or who shall permit or suffer any place to be so kept or used, shall, upon conviction thereof, be adjudged guilty of a misdemeanor.

SEC. 1943. Any person who shall impound, or cause to be impounded, in any pound or other place, any creature, shall supply to the same during such confinement a sufficient quantity of good, wholesome food and water, and in default thereof shall, upon conviction, be adjudged guilty of a misdemeanor.

SEC. 1944. In case any creature shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time, and as often as it shall be necessary, to enter into and upon any pound or other place in which any such creature shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such creature, and the said creature shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

SEC. 1945. If any person shall carry or cause to be carried in or upon any vehicle, boat or otherwise any creature in a cruel or inhuman manner, he shall be guilty of a misdemeanor, and whenever he shall be taken into custody therefor by any officer, such officer may take charge of such vehicle, boat, etc.,

(III) The term "needlessly," as here used, simply means an act done without useful motive, in a spirit of wanton cruelty, or for the mere pleasure of destruction. *Grise v. State*, 37—456. An indictment under this section need not allege the value or ownership of the animal. *Ib.* An indictment for needlessly killing an animal need not state the manner nor the particular circumstances of the killing. *State v. Greenlees*, 41—353.

(†) The offenses created by this act are punishable by fine or imprisonment, or both, under SEC. 2:23. See *State v. Greenlees*, 41—353.

and its contents, and deposit the same in some safe place of custody, and any necessary expenses which may be incurred for taking charge of and keeping and sustaining the same shall be a lien thereon, to be paid before the same can lawfully be recovered; or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of said creature in any action therefor.

SEC. 1946. Every person who shall willfully set on foot, or instigate, or move to, or carry on, or promote, or engage in, or do any act toward the furtherance of any act of cruelty to any animal, shall be guilty of a misdemeanor.

SEC. 1947. Any person who shall sell, or offer for sale, or use, or expose, or who shall cause or procure to be sold, or offered for sale, or used, or to be exposed, any horse or other animal having the disease known as glanders or farcy, or any other contagious or infectious disease known to such person to be dangerous to human life, or which shall be diseased past recovery, shall be guilty of a misdemeanor.

SEC. 1948. Every animal having glanders or farcy shall at once be deprived of life by the owner or person having charge thereof upon discovery or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor.

SEC. 1949. The agents of any society which shall be incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any county of this state, may within such county make arrests and bring before any court or magistrate thereof having jurisdiction offenders found violating the provisions of this act.

SEC. 1950. Any officer, agent or member of such society may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall interfere with or obstruct any such officer, agent or member in the discharge of his duty shall be guilty of a misdemeanor.

SEC. 1951. Any agent or officer of such society may lawfully destroy or cause to be destroyed any animal found abandoned or otherwise and not properly cared for, appearing, in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured or diseased past recovery for any useful purpose.

SEC. 1952. When any person arrested is at the time of such arrest in charge of any vehicle drawn by or containing any animal, any agent of such society may take charge of such animal and of such vehicle and its contents and deposit the same in a safe place of custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof.

SEC. 1953. No injunction shall be granted against such society or any of its officers or agents, except upon motion after due notice and hearing thereof.

SEC. 1954. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases that the complainant has any just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being, or are about to be, violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place and to arrest any person there present found violating any of said laws, and to bring such person

before the nearest magistrate of competent jurisdiction, to be dealt with according to law (*).

SEC. 1955. In this act, and in every law of this state passed or which may be passed relating to or affecting animals, the singular shall include the plural; the words "animal" or "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; and the words "owner" and "person" shall be held to include corporations as well as individuals; but nothing in this act shall be construed as prohibiting the shooting of birds or other game for the purposes of human food. *Act March 11, 1879.*

LXII.—FIRING WOODS, MARSHES OR PRAIRIES.

SECTION

1956. So as to occasion damage.

1957. Firing woods, etc., of another.

1958. Person injured by willful firing of any woods may recover double damages.

SECTION

1959. Act committed by hireling, when employer liable.

1960. Woods, etc., may be burned by consent of parties concerned.

SECTION 1956. If any person shall willfully set on fire any woods, marshes or prairies so as thereby to occasion any damage to any other person, such person shall pay a sum not less than twenty-five nor more than three hundred dollars, one-fourth thereof for the use of the person suing for the same, and the other three-fourths to the use of the county in which the offense is committed; in default of payment of such fine, he shall be imprisoned in the county jail not less than ten nor more than sixty days.

SEC. 1957. If any person shall willfully set on fire any woods, marshes or prairies not his own, such person shall be fined in any sum not exceeding one hundred dollars or be imprisoned in the county jail not less than ten nor more than thirty days.

SEC. 1958. If any person shall willfully set on fire any woods, marshes or prairies, whether his own or not, so as thereby to occasion any damage to any other person, such person shall make satisfaction in double damages to the party injured, to be recovered by civil action (†).

SEC. 1959. When an offense shall be committed against this act by a hireling, with the consent or by the command of his employer, such employer shall be liable in the same manner and to the same extent as if the act had been committed by himself.

SEC. 1960. If two or more persons shall wish to burn off any woods, marshes or prairies for the benefit of such neighborhood, they shall give notice

(*) In ordinary proceedings under this act the warrant will be in the form used in other cases of misdemeanor, describing the offense charged in general terms. See *note (1) to SEC. 1933*. When the complaint authorizes a search the clause directing it may be substantially in the language of the statute, preceded by a recital, as in the form given in *note (o), sub. div. 5, chap. 46*.

(†) This section is inserted here because the provisions of section 1960 apply equally to it and to all the other sections found in this subdivision. It would otherwise have been placed in chapter 150. See SEC. 6462.

of such intention to those concerned in the immediate vicinity at least one day before such burning, and if a majority of those living contiguous thereto shall consent to the same, and said persons shall use all due caution to prevent damage thereby, such persons shall not be liable to the penalty in the foregoing sections of this act. *Act Feb. 3, 1875, secs. 1-4, 6.*

LXIII.—ALL ACTS INJURIOUS TO PUBLIC HEALTH,
MORALS, ETC., HOW PUNISHED.

SECTION 1961. If any person shall commit any act injurious to the public health or public morals, or to the perversion or obstruction of public justice, or the due administration of the laws, he shall be deemed guilty of a misdemeanor (*). *Rev. Stat., chap. 44, sec. 7.*

(*) See SECS. 567, 2322, 2323.

CHAPTER XLVI.

CRIMINAL PROCEDURE.

- I. MODE OF PROSECUTION.—Sec. 1962.
- II. CRIMINAL JURISDICTION OF THE COURTS OF THE STATE.—Sec. 1966.
- III. LIMITATION OF PROSECUTIONS.—Sec. 1987.
- IV. ARREST OF CRIMINALS FOR PRELIMINARY EXAMINATION, OR TRIAL BEFORE A MAGISTRATE.—Sec. 1992.
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- VI. PROCEEDINGS IN EXAMINING COURT.—Sec. 2019.
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- VIII. GRAND JURY, ITS POWERS AND DUTIES.—Sec. 2073.
- IX. INDICTMENT, ITS FORM AND REQUISITES.—Sec. 2100.
- X. PROCESS UPON AN INDICTMENT.—Sec. 2132.
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- XIV. TIME, AND POSTPONEMENT OF TRIAL.—Sec. 2185.
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- XVI. TRIAL AND VERDICT.—Sec. 2213.
- XVII. NEW TRIAL AND ARREST OF JUDGMENT.—Sec. 2295.
- XVIII. BILLS OF EXCEPTION.—Sec. 2304.
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- XX. EXECUTION.—Sec. 2328.
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- XXIV. PROCEEDINGS TO PREVENT THE COMMISSION OF OFFENSES.—Sec. 2381.
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- XXV. DISPOSITION OF STOLEN PROPERTY.—Sec. 2416.
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- XXVIII. APPEALS TO CIRCUIT COURTS IN CRIMINAL CASES.—Sec. 2432.
- XXIX. APPEALS TO THE SUPREME COURT IN CRIMINAL CASES.—Sec. 2440.

I.—MODE OF PROSECUTION.

SECTION

1962. Offenses, persons charged with, liable to arrest.

1963. what indictable; exceptions.

1964. how prosecuted in justice or police courts.

SECTION

1965. Offenses punishable by fine only, may be prosecuted, how.

SECTION 1962. Persons charged with the commission of a public offense shall be liable to be immediately arrested and proceeded against in the manner hereinafter directed.

SEC. 1963. All public offenses may be prosecuted by indictment, except:

First. Offenses of public officers, where a different mode of procedure is prescribed by law.

Second. Offenses exclusively within the jurisdiction of police or city courts.

Third. Offenses arising in the militia, of which a military court has exclusive jurisdiction (a).

SEC. 1964. Offenses within the jurisdiction of a justice of the peace, or of a city or police court, may be prosecuted by a summons or warrant of arrest, in which shall be stated, in general terms, the offense charged to have been committed.

SEC. 1965. A public offense, of which the only punishment is a fine, may be prosecuted by a penal action in the name of the State of Arkansas, or in the name of an individual or corporation, where the whole fine is given to such individual or corporation. The proceedings in penal actions are regulated by the practice in civil actions. *Crim. Code, secs. 5-8.*

II.—CRIMINAL JURISDICTION OF THE COURTS OF THE STATE.

SECTION

1966. Jurisdiction of offenses.

LOCAL JURISDICTION.

1967. Jurisdiction of senate and supreme court.

1968. of circuit and justices' courts.

1969. of police and city courts.

1970. Locality of misdemeanors in city, stated when.

1971. Circuit court may certify case to police court, when.

1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980. When offenses may be prosecuted in either of several counties.

SECTION

1981. County in which offender first arrested to try offense.

1982. Mortal injury in this state, and death elsewhere.

1983, 1984. Larceny of property out of the state brought into the state.

1985. Plea of conviction or acquittal out of state, in such case, bars prosecution here.

WRIT OF PROHIBITION.

1986. Prohibition, writs of, when to issue.

SECTION 1966. The jurisdiction of the various courts of this state, for the trial of offenses, shall be as follows:

First. The senate of Arkansas have exclusive jurisdiction of impeachment.

Second. The supreme court shall have general supervision and control over all inferior courts in criminal cases (*).

(a) See art. II, sec. 8, *Const.*

(*) See art. VII, sec. 4, *Const.*, note (gg).

Third. The circuit courts have general jurisdiction for the trial of all offenses which may be prosecuted by indictment, and all prosecutions and penal actions, except as herein otherwise provided (b); and where an indictment is found in the circuit court for an offense within its jurisdiction, such court shall have jurisdiction of all the degrees of such offense, and of all the offenses included in the one charge, although some of those degrees or included offenses are within the exclusive jurisdiction of an inferior or local court.

Fourth. City and police courts shall have exclusive jurisdiction of all prosecutions and actions for infraction of the by-laws or ordinances of the city or town in which they are located; and concurrent jurisdiction with the circuit courts and justices' courts of prosecutions for misdemeanors committed in the town or city, and also concurrent jurisdiction in the cases provided by the special statutes creating or regulating such courts (c).

Fifth. In criminal causes the jurisdiction of justices of the peace shall extend to all matters less than felony for final determination and judgment (d). *Provided*, that circuit courts shall have jurisdiction concurrent with justices' courts in all such cases. *Crim. Code, sec. 10, as amended 1871, and sec. 11.*

LOCAL JURISDICTION.

SEC. 1967. The jurisdiction of the senate and supreme court embraces the whole state.

SEC. 1968. The local jurisdiction of circuit courts and justices' courts shall be of offenses committed within the respective counties in which they are held (*).

SEC. 1969. The local jurisdiction of police or city courts shall be of offenses committed within the limits of the jurisdiction of such courts, as prescribed by the statutes creating or regulating them.

SEC. 1970. The judges of circuit courts may require the grand juries, in prosecutions for misdemeanors within the local jurisdiction of city or police courts, to state in the indictments that such misdemeanors were committed within the town or city or other local limits of the jurisdiction of the city or police courts.

SEC. 1971. Where prosecutions have been commenced in the circuit court, of which a city, magistrate's or police court has concurrent jurisdiction, they may, by an order made by the judge of the circuit court, at his discretion, be removed into such city, magistrate's or police court for trial. Upon such order being made, the clerk of the circuit court shall deliver to the clerk of the city, magistrate's or police court all the papers relating to the prosecutions and a copy of the order of removal, and thereupon the defendant shall be bound to appear in said police, magistrate's or city court, and the prosecution be carried on to final judgment and execution, as if commenced in such court. *Crim. Code, secs. 12-16.*

SEC. 1972. Where the offense is committed on the boundary of two coun-

(b) See art. VII, sec. 11, Const., note (11); *State v. Devers*, 34—188.

(c) See SECs. 797, 800, 814.

(d) See *Thom v. State*, 35—327; *James Bradley v. State*, 32—722.

(e) As to indictment in county for offense committed within its territory before its formation, see *McElroy v. State*, 13—708.

ties, or if it is uncertain where the boundary is, the indictment may be found and a trial had in either county (e). *Rev. Stat., chap. 45, sec. 93.*

SEC. 1973. When property stolen in one county, and brought into another, shall have been taken by burglary or robbery, the offender may be indicted, tried and convicted for such burglary or robbery in the county into which such stolen property was taken, in the same manner as if such burglary or robbery had been committed in that county. *Ib., sec. 99.*

SEC. 1974. When any person shall be liable to be prosecuted as the receiver of any personal property that may have been feloniously stolen, taken or embezzled, he may be indicted, tried and convicted in any county where he received or had such property, notwithstanding such larceny may have been committed in another county. *Ib., sec. 91.*

SEC. 1975. An indictment against any accessory to any felony may be found in any county where the offense of such accessory may have been committed, notwithstanding the principal offense may have been committed in another county; and the like proceedings shall be had therein, in all respects, as if the principal offense had been committed in the same county. *Ib., sec. 97.*

SEC. 1976. When any offense may have been committed within this state, on board of any steam, flat or keel-boat, or other vessel, in the course of any voyage or trip, an indictment for the same may be found, and a trial and conviction thereon had in any county through which, or any part of which, such boat or vessel shall have passed in the course of the same voyage or trip, and with like effect as in the county in which the offense was committed (†). *Ib., sec. 92.*

SEC. 1977. Where a river is the boundary between two counties, the criminal jurisdiction of each county shall embrace offenses committed on the river or any island thereof.

SEC. 1978. Where the offense is committed partly in one county and partly in another, or the acts or effects thereof requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

SEC. 1979. Where the offense consists of importing any property into the state, the jurisdiction shall be in any county into which the offender imports the property.

SEC. 1980. Where the offense consists of kidnaping or seizing or confining a person without lawful authority, the jurisdiction shall be in the county in which the kidnaping, seizing or confining was committed, or in any county in which it was continued.

SEC. 1981. Whenever two or more counties, by the foregoing provisions, have jurisdiction of the same offense, the county in which the defendant is first arrested shall proceed to try the offense to the exclusion of the others. *Crim. Code, secs. 17-21.*

SEC. 1982. If any wound or mortal injury shall be inflicted on any human being in this state, who shall die thereof in another state or country, whether the same be within the jurisdiction of the United States or not, an indictment

(e) Under the present constitution the legislature can not invest a court with jurisdiction of crimes committed beyond the limits of the county. *Dougan v. State*, 30—41. But as to crimes committed on the boundary line between two counties, see *State v. Rhoda*, 23—156.

(†) See note (e) to SEC. 1972.

may be found, and trial and conviction thereon had, in the county in which the wound or mortal injury was given or inflicted, in all respects as if the death had happened in such county.

SEC. 1983. Every person who shall steal or obtain by robbery the property of another, in any other state or country, whether the same be within the jurisdictional limits of the United States or not, and shall bring the same within this state, may be indicted, tried and punished for larceny, in the same manner as if such property had been feloniously stolen or taken within this state; and in any such case the larceny may be charged to have been committed in any county into or through which such stolen property may have been taken (f).

SEC. 1984. Every person prosecuted under the provisions of the preceding section may plead a former conviction or acquittal for the same offense in another state or country.

SEC. 1985. If such plea be admitted or established, it shall be a bar to any other or further proceedings against such person for the same matter. *Rev. Stat., chap. 45, secs. 96, 255, 256.*

WRIT OF PROHIBITION.

SEC. 1986. The circuit court of any county may, by writ of prohibition, restrain all other courts in the limits of the county from exceeding their criminal jurisdiction. *Crim. Code, sec. 22.*

III.—LIMITATION OF PROSECUTIONS.

SECTION

1987. Limitation, none for capital offenses.
1988. of other felonies, what.

SECTION

1989. Limitation of misdemeanors, etc., what.
1990, 1991. In what cases does not run.

SECTION 1987. Any person may be prosecuted, tried and punished for any offense punishable with death at any time after the offense may have been committed.

SEC. 1988. No person shall be prosecuted, tried and punished for any other felony unless an indictment be found within three years after the commission of the offense.

SEC. 1989. No person shall be tried, prosecuted and punished for any offense less than felony, or any fine or forfeiture, unless the indictment be found or a prosecution instituted within one year after the commission of the offense or incurring the fine or forfeiture (g).

SEC. 1990. Nothing in the two preceding sections shall avail any person who shall flee from justice; and in all cases the time during which any defend-

(f) This section was not abrogated by art. II, sec. 10, of the constitution. *State v. Johnson*, 38—558. In order to give the circuit court of a county in this state jurisdiction to try one for larceny of property stolen in another state, it must appear that the property was brought by him into this state, with a continuous felonious intent. *Ib.*

(g) See *Strawn v. State*, 14—549.

ant shall not have been a resident of this state shall not constitute any part of the limitation prescribed in the preceding sections (g2).

SEC. 1991. When any indictment or prosecution shall be quashed, set aside or reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offense (h). *Rev. Stat., chap. 45, secs. 250-254.*

IV.—ARREST OF CRIMINALS FOR PRELIMINARY EXAMINATION OR TRIAL BEFORE A MAGISTRATE.

SECTION

1992. Warrant of arrest, who may issue.
 1993. form of.
 1994. bail on, who may take, and when.
 1995. duty of officer taking bail on.
 1996. bail on not invalid, when.
 1997, 1998. magistrate, when to issue.
 1999, 2000. return of officer executing.

ARREST, BY WHOM AND HOW MADE.

2001. Arrest, may be by peace officer or private person.
 2002. by peace officer, when.
 2003. by private person, when.

SECTION

2004. Arrest, by verbal order of magistrate, when.
 2005, 2006, 2007. how made.
 2008. officer making, may summon *posse comitatus*.
 2009. officer may break door to effect, when.
 2010. officer making, how to proceed with defendant.
 2011, 2012. without warrant, proceedings.
 2013. when made in county where offense committed, magistrate to proceed to preliminary examination or final trial.
 2014. escape or rescue from.

SECTION 1992. A warrant of arrest may be issued by the following officers, who are called magistrates, viz.: judges of city or police courts, mayors and justices of the peace; and may be executed by the following officers, who are called peace officers, viz.: sheriffs, constables, coroners, jailers, marshals and policemen.

SEC. 1993. A warrant of arrest shall, in general terms, name or describe the offense charged to have been committed, the county in which it was committed, and command the officer to whom it is directed to arrest the person named therein as the offender, and bring him before some magistrate of the county in which the offense was committed, to be dealt with according to law. It may be substantially in the following form, varying the terms to suit the case (i):

(g2) It is not necessary that the defendant should leave the state. It is fleeing from justice, within the meaning of this section, for him to abscond from his known place of abode and secrete himself in another county to avoid arrest and prosecution for the offense. *Lay v. State*, 42—105.

(h) See *State v. Gill*, 33—129; *Gill v. State*, 38—524; *Lay v. State*, 42—105.

(i) This form is proper where the offense charged is a felony, but where it is a misdemeanor committed within the jurisdiction of the magistrate issuing the warrant the following form is more appropriate; and the authority to take bail according to section 1994 is only to be indorsed on warrants where the offense charged is a misdemeanor:

FORM OF WARRANT FOR MISDEMEANOR COMMITTED WITHIN LOCAL JURISDICTION OF MAGISTRATE.

THE STATE OF ARKANSAS.

To any sheriff, constable, coroner, jailer, marshal or policeman of the State of Arkansas:

You are commanded to arrest A. B. and bring him forthwith before me to answer the charge made against him of having committed an assault and battery on the person of C. D., in said county, on the first day of January, 18—.

Given under my hand, as justice of the peace of Pulaski County, this tenth day of January, 18—.

_____, J. P.
 See *Watson v. State*, 29—299; *Martin v. State*, 32—124.

THE STATE OF ARKANSAS.

To any sheriff, constable, coroner, jailer, marshal or policeman of the State of Arkansas:

It appearing that there are reasonable grounds for believing that A. B. has committed the offense of larceny in the County of Pulaski, you are therefore commanded forthwith to arrest A. B. and bring him before some magistrate of Pulaski County, to be dealt with according to law.

Given under my hand the — day of —, 18—.

C. D.,

Justice of the peace for Pulaski County.

Summon as witnesses E. F. and J. K.

Crim. Code, secs. 23, 24.

SEC. 1994. If the offense charged is a misdemeanor, the person arrested may immediately give bail for appearing on a day, to be named in the bail-bond, before the magistrate who issued the warrant, or before the court having jurisdiction to try the offense (j). The sheriff or other officer making the arrest may be authorized by the justice issuing the warrant to take the bail herein mentioned, by an indorsement made on the warrant to that effect. But no peace officer, except a sheriff or under-sheriff, can take bale except as provided in this section. *Crim. Code, secs. 25 and 79, as amended 1871.*

SEC. 1995. If the defendant give bail for his appearance before the magistrate, as provided in the preceding section, the officer taking the bail shall fix the day of the defendant's appearance, which shall not exceed five days from the day of arrest, unless the arrest be made in a different county from that in which the offense was committed, in which case there may be one day added for every twenty miles of distance from the place of arrest to the county in which the offense is charged to have been committed.

SEC. 1996. A deviation from the provisions of the preceding section shall not, however, render the bail-bond invalid.

SEC. 1997. It shall be the duty of a magistrate to issue a warrant for the arrest of a person charged with the commission of a public offense, when, from his personal knowledge, or from information given him on oath, he shall be satisfied that there are reasonable grounds for believing the charge.

SEC. 1998. When a magistrate is satisfied that a felony has been committed, he shall have power to summon before him any persons he may think proper, and examine them on oath concerning it, to enable him to ascertain the offender, and to issue a warrant for his arrest.

SEC. 1999. The officer who has executed a warrant of arrest shall make a written return on the warrant of the time and manner of executing it, and deliver the warrant to the magistrate before whom the defendant is brought; or, if bail be given, as provided in section 1994, the officer shall deliver the warrant and bail-bond to the magistrate before whom, or to the clerk of the court in which, the defendant is bound by the bail-bond to appear.

SEC. 2000. If the arrest is made in a different county from that in which the offense is charged to have been committed, and bail be given, the officer may transmit the warrant and bail-bond by mail to the person to whom, by the preceding section, he is required to deliver them.

(j) See SECS. 1966, 2013, 2369.

ARREST, BY WHOM AND HOW MADE.

SEC. 2001. An arrest may be made by a peace officer, or by a private person.

SEC. 2002. A peace officer may make an arrest (k):

First. In obedience to a warrant of arrest delivered to him.

Second. Without a warrant, where a public offense is committed in his presence, or where he has reasonable grounds for believing that the person arrested has committed a felony (*).

SEC. 2003. A private person may make an arrest where he has reasonable grounds for believing that the person arrested has committed a felony.

SEC. 2004. A magistrate or any judge may orally order a peace officer or private person to arrest any one committing a public offense in the magistrate's or judge's presence, which order shall authorize the arrest.

SEC. 2005. An arrest is made by placing the person of the defendant in restraint, or by his submitting to the custody of the person making the arrest.

SEC. 2006. No unnecessary force or violence shall be used in making the arrest.

SEC. 2007. The person making the arrest shall inform the person about to be arrested of the intention to arrest him, and the offense charged against him for which he is arrested, and, if acting under a warrant of arrest, shall give information thereof, and, if required, show the warrant.

SEC. 2008. An officer making an arrest may orally summon as many persons as he deems necessary to aid him in making the arrest, and any person failing, without reasonable excuse, to obey the summons, shall be guilty of a misdemeanor, and punished by fine and imprisonment, or either.

SEC. 2009. To make an arrest, an officer may break open the door of a house in which the defendant may be, after having demanded admittance and explained the purpose for which admittance is desired.

SEC. 2010. The officer making an arrest, in obedience to a warrant, shall proceed with the defendant as directed by the warrant.

SEC. 2011. Where an arrest is made without a warrant, whether by a peace officer or private person, the defendant shall be forthwith carried before the most convenient magistrate of the county in which the arrest is made, and the grounds on which the arrest was made shall be stated to the magistrate, and, if the offense for which the arrest was made is charged to have been committed in a different county from that in which the arrest was made, and the magistrate believes, from the statements made to him on oath, that there are sufficient grounds for an examination, he shall, by his written order, commit the defendant to a peace officer, to be conveyed by him before a magistrate of the county in which the offense is charged to have been committed; or, if the offense is a misdemeanor only, the defendant may give bail before the magistrate for appearing before a court or magistrate having jurisdiction to try the offense, on a day to be fixed by the magistrate and named in the bail-bond.

SEC. 2012. The magistrate taking bail, as provided in the last section, shall transmit by mail the bail-bond to the officer before whom, or the clerk of the court in which, the defendant is bound to appear.

(k) A constable is a peace officer, but he can not execute process directed to the sheriff, unless deputized. *Winkler v. State*, 32—539.

(*) See *Chrisman v. Carney*, 33—321.

SEC. 2013. Where the arrest is made in the county in which the offense is charged to have been committed, the magistrate before whom the defendant is carried shall forthwith proceed to an examination of the charge; and, if the offense charged be a felony, shall commit, hold to bail or discharge, as the case may be (l); or, if he have jurisdiction to hear and finally try the charge, shall proceed to final determination and judgment therein (m).

SEC. 2014. If the defendant, after an arrest, escapes or is rescued, the person in whose custody he was may immediately pursue and recapture him in any part of the state (n). *Crim. Code, secs. 26-45.*

V.—SEARCH WARRANTS (o).

SECTION

2015. Search warrants, when to issue.
2016. to whom directed.

SECTION

2017. Search warrant, for searching in night-time.
2018. executed only by public officer.

SECTION 2015. Upon complaint being made on oath before any officer authorized to issue process for the apprehension of offenders that any personal

(l) For proceedings in such case, see SECS. 2019-2040.

(m) For proceedings where the magistrate has jurisdiction to try the defendant, see SECS. 2367-2377, particularly SEC. 2369. He has no authority to decline to try a misdemeanor and bind the accused over to the circuit court for trial, and a bail-bond taken by him in such case is void. *Thomm v. State*, 35-327.

(n) See *Blevins v. State*, 31-53.

(o) AFFIDAVIT FOR SEARCH WARRANT.

I, _____, do solemnly swear that certain personal property, to wit: _____, has been stolen (or embezzled) from _____, and that I do in truth suspect that such property is concealed in the house occupied by _____, in _____, in the county of _____, and pray a warrant from _____, a justice of the peace, to search said house.

Sworn to and subscribed before me, this _____ day of _____, 18—.

_____, J. P.

SEARCH WARRANT, IN DAY-TIME.

COUNTY OF _____.

The State of Arkansas to the sheriff of _____ county (or constable of _____ township, in _____ county),
GREETING:

WHEREAS, Complaint has been made on oath before the undersigned, one of the justices of the peace in and for the county of _____, by _____, that certain personal property of _____, to wit (describing the property particularly): has been stolen (or embezzled), and that the said complainant suspects that such property is concealed in the house occupied by _____, in said county (or in any other place, specially describing it); and,

WHEREAS, Being satisfied that there is reasonable ground for such suspicion, you are, therefore, hereby commanded to search the said place above mentioned, where such property is suspected to be concealed, in the day-time, and to bring such property, or any part thereof which may be found, before me, the said justice, forthwith. Hereof fail not, and make due return of this writ.

Given under my hand this _____ day of _____, 18—.

_____, J. P.

SEARCH WARRANT, TO SEARCH BY DAY OR NIGHT.

[Beginning and conclusion as in foregoing form, body of as follows:]

WHEREAS, Complaint has been made on oath before the undersigned, one of the justices of the peace in and for the county of _____, by _____, that certain personal property of _____, to wit (as in the foregoing form): has been stolen (or embezzled), and is concealed in, etc. (as in foregoing form); and,

WHEREAS, Positive proof has been made before me, the said justice, that such property, or part thereof is there concealed, you are, therefore, hereby commanded to search the said place, in the day-time or in the night-time, and to bring such property, or any part thereof which may be found, before me, the said justice, forthwith. Hereof, etc.

_____, J. P.

property has been stolen or embezzled, and that the complainant suspects that such property is concealed in any particular house or place, if such officer shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

SEC. 2016. Such warrant shall be directed to the sheriff of the county, or to any constable, and shall command him to search the place where such property is suspected to be concealed, in the day-time, which place shall be designated and the property particularly described, and bring such property before the magistrate issuing the warrant.

SEC. 2017. If there be positive proof that any property stolen or embezzled is concealed in any particular house or place, the warrant may order the searching of such house or place in the night-time.

SEC. 2018. Every such warrant shall be executed by a public officer, and not by any other person. *Rev. Stat., chap. 45, secs. 15-18.*

VI.—PROCEEDINGS IN EXAMINING COURT.

SECTION

- 2019. Magistrate may commit or hold to bail.
- 2020. to state charge and grant time to procure counsel, etc.
- 2021. to issue subpoenas for witnesses.
- 2022. may adjourn examination.
- 2023, 2024, 2025. Bail during such adjournment; money in lieu of, etc.
- 2026. Officer responsible for deposit.
- 2027. Time for appearance of defendant extended, when.
- 2028. Forfeiture of bail.
- 2029. Who may be excluded from examining court-room.

SECTION

- 2030. Witnesses may be separated, etc.
- 2031. name and residence of, to be stated in minutes.
- 2032. Defendant, when shall be discharged.
- 2033. when committed.
- 2034. when held to answer for different offense
- 2035. when not to be admitted to bail.
- 2036, 2037. Witnesses to be recognized, when.
- 2038. Order of commitment, form of.
- 2039. Bail after commitment.
- 2040. Magistrate to send papers to clerk, when.

SECTION 2019. A magistrate of the county in which a public offense has been committed is authorized to examine the charge, and commit to jail or hold to bail the person charged with its commission (p).

SEC. 2020. When a person who has been arrested shall be brought, or in pursuance of a bail-bond shall come, before a magistrate of the county in which the offense is charged to have been committed, the charge shall be forthwith examined, reasonable time, however, being allowed for procuring counsel and the attendance of witnesses. The magistrate, before commencing the examination, shall state the charge, and inquire of the defendant whether he desires the aid of counsel, and shall allow a reasonable opportunity for procuring it.

SEC. 2021. The magistrate shall issue subpoenas for witnesses either for or against the defendant, which shall be executed by a peace officer, and shall coerce their attendance by the same process as in the circuit courts.

SEC. 2022. For the purpose of procuring the attendance of witnesses, either against or for the defendant, or other sufficient reason, the magistrate

(p) See SECS. 2013, 2369.

may adjourn the examination from time to time, not, however, exceeding three days at a time. *Crim Code, secs. 46-48.*

SEC. 2023. During the periods of adjournment the defendants shall be committed to jail or to the custody of a peace officer; but the defendant may give bail, or the magistrate may fix a sum equivalent to bail, upon which being deposited with the peace officer in attendance, unless he be a policeman, as surety for the defendant's appearance at the time or times appointed, he may be released from custody during the periods of the adjournment of the examination. *Provided*, that magistrates shall have no power to admit to bail in such cases, where the charge is for a capital offense, murder or manslaughter. *Crim. Code, sec. 49, as amended by act. Feb. 16, 1877.*

SEC. 2024. The sum of money to be deposited shall not be less than the full amount in which bail would be required upon the defendant being held for trial of the charge.

SEC. 2025. An entry shall be made by the magistrate of the deposit, and by whom made, on the minutes of the examination; and if the defendant appears on the day, or on a day to which the magistrate may extend the time of his appearance, or dies during the adjournment, the money shall be returned by the peace officer to the person depositing it, or his representatives; but, if the defendant fails to appear, the peace officer shall, within ten days after such failure, pay over the money to the county collector, to be paid into the county treasury.

SEC. 2026. The peace officer shall be responsible on his official bond for the money so deposited with him.

SEC. 2027. Where a deposit of money has been made or bail given, the magistrate may, for sufficient cause, extend the time for the appearance of the defendant, not exceeding, however, ten days.

SEC. 2028. If the defendant gives bail for his appearance during the examination, and fails to appear at the time specified, or at the time extended, the magistrate shall indorse on the bail-bond the word "forfeited," with his signature thereto, and return the bond to the clerk of the circuit court of the county, who shall issue summons thereon, as directed in section 2068, and such indorsement shall be sufficient evidence of the forfeiture of the bond.

SEC. 2029. Upon the request of the defendant all persons may be excluded from the room in which the examination is made, except the magistrate, his clerk, the peace officer, the prosecutor, the attorney or attorneys representing the state, the prisoner, his counsel, and the witness under examination.

SEC. 2030. During the examination the magistrate may cause the witnesses to be kept out of hearing of the witness deposing, and also separate from each other.

SEC. 2031. The magistrate, in the minutes of the examination, shall state the name and place of residence of each witness, and shall make a general statement of the substance of what was proved and file the same with the proceedings (q).

SEC. 2032. When the examination is closed, if the magistrate is of opinion that there is not sufficient cause for believing that the defendant has committed

(q) Evidence of the testimony of a witness before an examining court is admissible on the trial for the same offense in the circuit court where the witness has forfeited his recognizance and can not be found. *Shackelford v. State*, 33—539. See *Hurley v. State*, 29—17; *Dolan v. State*, 40—454; *Griffith v. State*, 37—324.

a public offense, he shall discharge the defendant from custody and make an entry thereof on the minutes.

SEC. 2033. If, however, the magistrate is of opinion, from the examination, that there are reasonable grounds to believe the defendant guilty of the offense charged, he shall be held for trial and committed to jail, or discharged on bail if the offense be bailable.

SEC. 2034. If upon the trial it shall appear that the defendant is guilty of a public offense other than that charged in the warrant, he shall be held in custody of the officer and tried for such offense, a reasonable opportunity having been given him to obtain his witnesses and prepare his defense.

SEC. 2035. Justices of the peace shall have no power to admit to bail in capital offenses, murder or manslaughter.

SEC. 2036. On holding the defendant to answer the charge, the magistrate shall cause each of the material witnesses on behalf of the state to enter into a recognizance (r) before him to the effect that he will attend and testify at the court to which the defendant is sent for trial, or forfeit a sum not less than one hundred dollars to the State of Arkansas.

SEC. 2037. The magistrate shall, in like manner, at the defendant's request, cause the material witnesses for the defendant to enter into recognizance in the same penalty for appearing and testifying in the court to which he is sent for trial; but it shall be named in the recognizance that they are witnesses for the defendant, and the state shall not be liable for their attendance and mileage as witnesses.

SEC. 2038. If the defendant is committed to jail, the magistrate shall make out a written order of commitment (s), signed by him, which shall be delivered to the jailer by the peace officer who executed the order of commitment. If the offense is bailable, the magistrate must fix the sum for which bail is to be given, and, if sufficient bail is offered, take the same and discharge the defendant. If, however, sufficient bail is not offered, the sum in which bail is required must be stated in the order of commitment.

SEC. 2039. The defendant, after commitment and before the commencement of the next term of the court having jurisdiction to try the offense, may be admitted to bail in the sum fixed by the committing magistrate, by such magistrate, or the circuit court, or the judge thereof in vacation; but after the commencement of the term of the court he can only be admitted to bail by the court or the judge thereof.

SEC. 2040. The magistrate shall, in ten days, and before the commencement of the next term of the court to which the defendant is sent for trial, deliver to the clerk of such court the warrant, if any; the minutes of the examination, including the statements of the witnesses; the instruments of

(r) See SEC. 3261.

(s) The order of commitment may be substantially in the following form:

THE STATE OF ARKANSAS.

To the jailer of ——— county:

You are commanded to receive into the jail of ——— county A. B., and him safely keep until discharged by due course of law, he having been held by me, as an examining court, for trial in the ——— circuit court, on the charge of ——— (naming the crime, as robbery, larceny, etc.), and allowed to give bail in the sum of ——— dollars, for default of which he is committed to jail.

Given under my hand, this ——— day of ———, 18—.

C. D., J. P.

See *Rohe, ex parte*, 5—104.

writing and other things used in evidence; the decision and action of the magistrate; the bail-bond, if any, and the recognizance of the witnesses. *Crim. Code, secs. 50-65, and sec. 66, as amended 1871.*

VII.—BAIL.

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ADMISSION TO BAIL.

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 2042. taking of, consists in, what.
 2043, 2044, 2045, 2046. sufficiency and qualifications of.
 2047. bond, form of.
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 2050, 2051. bond not invalid, if.
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 2053. after defendant committed to jail.
 2054. during trial of indictment.
 2055. before conviction.
 2056. after conviction, not allowed.

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2057. Bail may surrender principal, and principal may surrender self.
 2058, 2059. authority of, to arrest principal.

DEPOSIT OF MONEY IN LIEU OF BAIL.

2060. Deposit of money in lieu of bail, how made.

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2061. Deposit, after bail, exonerates bail.
 2062. county treasurer to hold subject to order of court.
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FORFEITURE OF BAIL.

2064. Forfeiture of bail-bond, when.
 2065. may be discharged, when.
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 2067. Action on bail-bond, in what court.
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RECOMMITMENT AFTER BAIL, OR DEPOSIT OF MONEY.

2071. In what cases ordered.
 2072. Re-admission to bail.

ADMISSION TO BAIL (t).

SECTION 2041. Admission to bail is an order from a competent court or magistrate that the defendant be discharged from actual custody on bail.

SEC. 2042. The taking of bail consists in the acceptance, by a competent court, magistrate or officer, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the state the sum specified (*).

SEC. 2043. The bail shall be residents of the state, owners of visible property, over and above that exempt from execution, to the value of the sum in which bail is required, and shall be worth that amount after the payment of their debts and liabilities (**).

SEC. 2044. The person or persons offered as bail shall be examined on oath in regard to their qualifications as bail, and any officer authorized to take bail is authorized to administer the oath, reduce the statements on oath to writing, and require the person offered as bail to sign the statement. Other proof may be also taken in regard to the sufficiency of bail.

(t) All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great. *Art. II, sec. 8, Const.*

(*) The indorsement upon a bail-bond of the approval of the officer taking it is not essential to its validity. *Adler v. State, 35—517.*

(**) A bail-bond is a debt by contract, and the exemption laws apply to a judgment and execution on it. *State v. Williford, 36—155.*

SEC. 2045. No person shall be taken as bail, unless the court, magistrate or officer is satisfied, from proof and examination on oath, of the sufficiency of such person, according to the requisitions of the two preceding sections.

SEC. 2046. Where more than one person is offered as bail, they shall be deemed sufficient, if in the aggregate they possess the qualifications required.

SEC. 2047. The undertaking of the bail shall be substantially as follows:

A. B., being in custody, charged with the offense of (naming or briefly describing it), and being admitted to bail in the sum of ——— dollars, we, C. D., of (stating his place of residence), and E. F., of (stating his place of residence), hereby undertake that the above-named A. B. shall appear in the ——— court on the ——— day of its ——— term to answer said charge, and shall at all times render himself amenable to the orders and process of said court in the prosecution of said charge, and, if convicted, shall render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the State of Arkansas the sum of ——— dollars.

SEC. 2048. The sheriff arresting a person under a warrant or other process, in which it shall appear that the person is to be admitted to bail in a specified sum, may take the bail and discharge the person from actual custody. A sheriff taking bail shall be officially responsible for the sufficiency of the bail, as in taking bail in civil actions (u). *Civil Code, secs. 67, 68, 72-75, 77, 78.*

SEC. 2049. When a sheriff shall commit to the common jail of his county any prisoner, under a bench warrant, in a bailable case, when the amount of bail has been fixed by the circuit judge, and when he shall so commit, under a warrant from a magistrate who has fixed the amount of bail, it shall be lawful for said sheriff to take the bail and discharge the prisoner in the same manner as he could have done before the said commitment. *Act Nov. 12, 1875.*

SEC. 2050. No peace officer, except a sheriff or under-sheriff, can take bail, except as provided in section 1994.

SEC. 2051. No bail-bond or recognizance shall be deemed to be invalid by reason of any variance between its stipulations and the provisions of law relating there to, or of the failure of the magistrate or officer to transmit or deliver the same at the times herein provided, or of any other irregularity, so that it be made to appear that the defendant was legally in custody, charged with a public offense, and that he was discharged therefrom by reason of the giving of the bond or recognizance, and that it can be ascertained from the bond or recognizance that the bail undertook that the defendant should appear before a magistrate for the trial thereof. If no day be fixed for such appearance, or an impossible day, or a day in vacation, the bond or recognizance, if for his appearance before a magistrate, shall be considered as binding the defendant so to appear and surrender himself into custody for an examination of the charge in twenty days from the time of his giving such bond or recognizance; and, if for his appearance for trial in court, shall be considered as binding the defendant so to appear and surrender himself into custody on the first day of the next term of the court which shall commence more than ten days after the giving of the bond or recognizance (v). *Crim. Code, secs. 79, 80.*

SEC. 2052. Recognizances taken in any criminal proceeding in open court, by any court of record, shall be entered on the minutes of such court, and the

(u) See *Pinson v. State*, 28—397.

(v) See *Pinson v. State*, 28—397; *State v. Richardson*, *Ib.*, 316; *Humphries v. State*, 33—713.

substance thereof shall be read to the person recognized. *Rev. Stat., chap. 45, sec. 236.*

SEC. 2053. If the defendant is committed to jail, and the application for bail is made to a magistrate or judge of the circuit court during vacation, it must be by a written petition, signed by the defendant or his counsel, briefly stating the offense for which he is committed, and naming the persons offered as bail. In all other cases, the application may be made orally to the court, magistrate or officer (*).

SEC. 2054. During the trial of an indictment for a misdemeanor the defendant may remain on bail; but for a felony, when he is upon bail, he may remain upon bail or be kept in actual custody, as the court may direct.

SEC. 2055. Before conviction the defendant may be admitted to bail:

First. For his appearance before a magistrate for an examination of the charge, where the offense charged is a misdemeanor; or,

Second. For his appearance in the court to which he is sent for trial; or,

Third. For his appearance to answer an indictment which has been found against him; or,

Fourth. For his appearance in a penal action.

SEC. 2056. After conviction the defendant can not be admitted to bail.

SURRENDER OF THE DEFENDANT.

SEC. 2057. At any time before the forfeiture of their bond, the bail may surrender the defendant, or the defendant may surrender himself, to the jailer of the county in which the offense was committed; but the surrender must be accompanied by a certified copy of the bail-bond, to be delivered to the jailer, who must detain the defendant in custody thereon as upon a commitment and give a written acknowledgment of the surrender, and the bail shall thereupon be exonerated.

SEC. 2058. For the purpose of surrendering the defendant, the bail may obtain from the officer having in his custody the bail-bond or recognizance a certified copy thereof, and thereupon, at any place in the state, arrest the defendant, or by his written indorsement thereon authorize any person over the age of twenty-one years to do so (†).

SEC. 2059. The bail may arrest the defendant without such certified copy.

DEPOSIT OF MONEY IN LIEU OF BAIL.

SEC. 2060. Whenever the defendant is admitted to bail in a specified sum, he may deposit said sum with the county treasurer in the county in which the trial is directed to be had, and take from the treasurer a certificate of such deposit; upon delivering which to the officer in whose custody he is, he shall be discharged.

SEC. 2061. After bail has been taken, a deposit may in like manner be made of the sum mentioned in the bail-bond, which shall exonerate the bail.

(*) The supreme court has power to review, on *certiorari*, the decision of a circuit judge refusing bail. *Harbour, ex parte*, 39—126. On an application for bail in a criminal case, the court will give the prisoner the benefit of any reasonable doubts that may arise in considering the testimony. *Bird and Bailey, ex parte*, 24—275.

(†) See *Sternberg v. State*, 42—127.

SEC. 2062. Where money is deposited, the county treasurer shall hold and pay the same according to the orders of the court having jurisdiction to try the offense, and he and his sureties shall be liable for the same on their official bond.

SEC. 2063. Upon judgment being rendered against a defendant for fine and costs, the court rendering judgment may order any money deposited agreeably to the foregoing sections to be applied to the payment thereof.

FORFEITURE OF BAIL.

SEC. 2064. If the defendant fail to appear for trial or judgment, or at any other time when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court may direct the fact to be entered on the minutes, and thereupon the bail-bond, or the money deposited in lieu of bail, is forfeited (w).

SEC. 2065. If, before the final adjournment of the court, the defendant appears and satisfactorily excuses the failure, the court may discharge the forfeiture.

SEC. 2066. If the forfeiture is not discharged, the prosecuting attorney for the circuit may, at any time after the adjournment of the court, proceed by action against the bail on their bond.

SEC. 2067. The action on the bail-bond shall be in the court in which the defendant was, or would have been, required to appear for trial.

SEC. 2068. No pleadings are required on the part of the state, but the clerk shall issue a summons against the bail, requiring them to appear on the first day of the next term of the court to show cause why judgment should not be rendered against them for the sum specified in the bail-bond on account of the forfeiture thereof, which summons shall be executed as in civil actions, and the action proceed as an ordinary civil action (x).

SEC. 2069. Where money is deposited in lieu of bail, after such forfeiture and final adjournment of the court the treasurer shall pay the sum deposited to the collector of the county, who shall pay the same into the county treasury.

SEC. 2070. If, before judgment is entered against the bail, the defendant is surrendered or arrested, the court may, at its discretion, remit the whole or part of the sum specified in the bail-bond.

(w) See *State v. Richardson*, 28—346; *Gentry v. State*, 22—544; *Pack v. State*, 23—239.

(x) The record and proceedings in the case against the principal constitute the complaint against the bail. *Ullery v. Town of Fort Smith*, 35—214; *Thomm v. State*, *Ib.*, 327. If fatally defective, the summons may be quashed on motion, but is not subject to demurrer. *Miller v. State*, *Ib.*, 276. Matters in defense on merits may be set up by answer as in civil actions. *Ib.* See also *State v. Jones*, 29—127.

The sureties can not show that the indictment against the principal was bad. *Revere v. State*, 34—610.

Where the defendant is ordered into the custody of the sheriff, to be taken to a county to which the venue is changed, the liability of the bail ceases. *State v. Jones*, 29—127.

Whatever judicial act deprives a defendant's bail of the right to arrest and surrender him discharges the bail. *State, use, etc., v. Glenn*, 40—332.

It is no defense that the principal, by reason of mob violence existing in the county before and at the time he should have appeared, and the fear of losing his life by violence, had fled from the county, and that he could not safely have remained in the county and at the court for fear that he would not be protected by the law. *Sugarman v. State*, 28—142.

The act of God, of the obligee or of the law may excuse the surety. *Belding v. State*, 25—315.

It is no defense that the principal, at the time he was required to appear, was insane and had been taken out of the state and confined in an insane asylum of another state to be treated for his insanity. *Adler v. State*, 35—517.

RECOMMITMENT AFTER BAIL OR DEPOSIT OF MONEY.

SEC. 2071. The court in which a prosecution for a public offense is pending may, by an order, direct the defendant to be arrested and committed to jail until legally discharged, after he has given bail or deposited money in lieu thereof, in the following cases:

First. When, by having failed to appear, a forfeiture of bail or of the money deposited has been incurred.

Second. When the court is satisfied that his bail, or either of them, is dead or insufficient, or has removed from the state.

Third. Upon an indictment being found for an offense not bailable.

SEC. 2072. Upon such order being made, the clerk shall issue process for the arrest and recommitment of the defendant. If the order is made on account of either of the cases mentioned in the first and second subdivisions of the preceding section, the defendant shall be admitted to bail as upon his first commitment, in a sum to be fixed by the court and named in the process for his arrest. *Crim. Code, secs. 69, 70, 71, 76, 81-94, 96, 97.*

VIII.—GRAND JURY, ITS POWERS AND DUTIES.

SECTION		SECTION	
2073.	Grand jury, how selected.	2088.	Grand jury, actions and votes of to be kept secret.
2074.	court to appoint foreman of.	2089.	when required to disclose testimony of witness.
2075.	oath of.	2090.	can not be questioned for official action, except.
2076.	may appoint clerk to keep minutes.	2091.	may have advice of court or prosecuting attorney.
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2078.	to indict for public offenses.	2093.	papers to be laid before; indorsement if no indictment found.
2079.	order of inquiry by.	2094, 2095.	charge dismissed by, may be resubmitted, when; limitation.
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2081.	to examine accounts of officers, dockets, etc., relating to school fund.	2097.	special, may be summoned, when.
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2084.	to receive none but legal evidence.		
2085.	when to find indictment.		
2086.	Witnesses, clerk to issue subpoena for; attendance coerced, how.		
2087.	how compelled to testify.		

SECTION 2073. The selecting, summoning and impaneling of a grand jury shall be as prescribed by law (*). *Crim. Code, sec. 98.*

SEC. 2074. The court shall appoint one of the number of every grand jury foreman thereof. *Crim. Code, sec. 406, as amended 1871.*

SEC. 2075. The following oath, in substance, shall be administered to the grand jurors: "Saving yourselves and fellow jurors, you do swear that you will diligently inquire of and present all treasons, felonies, misdemeanors and breaches of the penal laws over which you have jurisdiction, of which you have knowledge or may receive information" (**). *Ib.*

(*) For mode of selecting, etc., see SECS. 3982, 3983, 3987, 3991, 3992.

(**) See *Baker v. State*, 32—180.

SEC. 2076. Every grand jury may appoint one of the members to be clerk thereof, to preserve and keep the minutes of their proceedings and of the evidence given before them.

SEC. 2077. The minutes of the proceedings and evidence so kept shall be delivered to the prosecuting attorney when so directed by the grand jury. *Rev. Stat., chap. 45, sec. 62.*

SEC. 2078. The grand jury has power, and it is their duty, to inquire into all public offenses committed within the jurisdiction of the court in which they are impaneled, and to indict such persons as they find guilty thereof.

SEC. 2079. The grand jury must inquire—

First. Into the case of every person imprisoned in the county jail, or on bail, to answer a criminal charge in that court, and who is not indicted.

Second. Into the condition and management of the public prisons of the county.

Third. Into the willful and corrupt misconduct in office of public officers of every description in the county.

SEC. 2080. They are entitled to free access, at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county. *Crim. Code, secs. 99, 105, 106.*

SEC. 2081. They shall make careful examination of the condition of the accounts of the collecting officers of the county, dockets of justices of the peace, and any matters relating to the general school fund (y). *Act March 23, 1871, sec. 18.*

SEC. 2082. If a member of the grand jury know, or have reason to believe, that a public offense has been committed within the jurisdiction of the court, he must disclose the same to his fellow jurors, who must thereupon investigate the same.

SEC. 2083. The foreman of the grand jury shall have power to administer oaths to witnesses appearing before the grand jury (*).

SEC. 2084. The grand jury can receive none but legal evidence; they are not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence before them, and if they believe that other evidence within their reach will explain away the charge they should order the evidence to be produced.

SEC. 2085. The grand jury should find an indictment when all the evidence before them, taken together, would, in their judgment, if unexplained, warrant a conviction by the trial jury.

SEC. 2086. The clerk, on the request of the foreman of the grand jury, or of the prosecuting attorney, shall issue subpoenas for witnesses to appear before the grand jury; and if any witness fail to attend in obedience thereto, the court shall proceed to coerce his attendance, and may punish disobedience by fine and imprisonment, as in the case of a witness failing to attend on the trial.

SEC. 2087. When a witness under examination refuses to testify, or to answer a question put to him by the grand jury, the foreman shall proceed with the witness into the presence of the court, and there distinctly state the refusal of the witness; and if the court, upon hearing the witness, shall decide

(y) See SECS. 5861-5873.

(*) As to form of oath, see *State v. Green*, 24—591.

that he is bound to testify or answer the question propounded, he shall inquire of the witness if he persists in his refusal, and, if he does, shall proceed with him as in cases of similar refusal in open court.

SEC. 2088. Every member of the grand jury must keep secret whatever he himself, or any other grand juror, may have said, or in what manner he, or any grand juror, may have voted on a matter before them (z).

SEC. 2089. A member of the grand jury may, however, be required by a court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining its consistency with the testimony given by the witness on trial, or for the purpose of proceeding against the witness for perjury in his testimony, or upon the trial of a prosecution of the witness for perjury; and it shall be the duty of the foreman of the grand jury to communicate to the prosecuting attorney, when requested, the substance of the testimony before them.

SEC. 2090. A grand juror can not be questioned for anything he may say, or any vote he may give, relative to a matter legally before the grand jury, except for a perjury he may have committed in making accusation, or giving testimony before his fellow jurors.

SEC. 2091. The grand jury may, at all reasonable times, ask the advice of the court or the prosecuting attorney.

SEC. 2092. No person except the prosecuting attorney and the witnesses under examination are permitted to be present while the grand jury are examining a charge, and no person whatever shall be present while the grand jury are deliberating or voting on a charge.

SEC. 2093. All the papers and other matters of evidence relating to the arrest and examination of the charge against persons committed or on bail, returned to court by magistrates, shall be laid before the grand jury, and if upon investigation they refuse to find an indictment, they shall write upon some one of the papers "dismissed," with the signature of the foreman; and thereupon the court shall discharge the defendant from custody, if in jail, or exonerate the bail, if bail be given, unless the court should be of the opinion that the charge should again be submitted to another grand jury, in which case the defendant may be continued in custody, or on bail, until the next term of the court.

SEC. 2094. The dismissal of the charge does not prevent it being again submitted to a grand jury, as often as the court may direct, but without such direction it can not again be submitted.

SEC. 2095. Unless an indictment be found at the term of the court next after the first submission of the charge to the grand jury, the defendant shall be discharged from custody or exonerated from bail, unless for cause shown the court shall otherwise direct. *Crim. Code, secs. 101-104, 107-116.*

SEC. 2096. Any grand juror may be indicted by the grand jury of which he is a member; but when any complaint shall be lodged by a grand juror, the foreman shall inform the attorney for the state thereof, and if, on examination, there are grounds for proceedings against such juror, he shall inform the court thereof, and the court shall discharge such juror, and cause another to be summoned if necessary. *Crim. Code, sec. 407, as amended 1871.*

(z) See SEC. 1751.

SEC. 2097. If any offense be committed or discovered during the sitting of any court after the grand jury attending such court shall have been discharged, such court may, in its discretion, by an order to be entered in the minutes, direct the sheriff to summon a special grand jury. The sheriff shall, in pursuance of such order, forthwith summon such grand jury from the inhabitants of the county qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner in all respects as provided by law in respect to other grand jurors. *Rev. Stat., chap. 45, secs. 71, 72.*

SEC. 2098. Every person held to answer a criminal charge may object to the competency of any one summoned to serve as a grand juror, before he is sworn, on the ground that he is the prosecutor or complainant upon any charge against such person, or that he is a witness on the part of the prosecution, and has been summoned or bound in a recognizance as such; and, if such objection be established, the person so challenged shall be set aside (aa). *Rev. Stat., chap. 45, sec. 60.*

SEC. 2099. The court shall give in charge, specially, to the grand jury sections 1429, 1789, sections 510 to 520, both inclusive; sections 521 to 536, both inclusive; section 1683; sections 1693 to 1696, both inclusive; section 1788; section 1789; sections 1813 to 1820, both inclusive; sections 1827 to 1847, both inclusive; sections 1860, 1861; sections 1863, 1864; sections 1871 to 1877, both inclusive; sections 1935, 1936, 1937, 4263, 2658, 2678, 2692 and 2701 (*).

IX.—INDICTMENT, ITS FORM AND REQUISITES.

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2100. Indictment defined.
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 2102. must be indorsed "a true bill," and signed by foreman.
 2103. names of witnesses must be indorsed on.
 2104. must be presented by the foreman and filed.
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 2106, 2107. when sufficient.
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 2113. no place stated in, rule.
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SECTION

2117. Indictment, when misdescription of written instrument immaterial in.
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 2120. words used in, how construed.
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 2125, 2126. officers of court not to disclose fact of finding, except.
 2127. after arrest clerk to record.
 2128. when certified copy of may be used.
 2129. when statutory fine or penalty may be recovered by.
 2130. second, for same offense, suspends first.
 2131. trial on, not to be delayed because some of defendants have not been arrested.

SECTION 2100. An indictment is an accusation in writing, found and presented by a grand jury to the court in which they are impaneled, charging the person with the commission of a public offense.

(aa) See *Fenally v. State*, 12—630.

(*) The authority for this section is found in numerous acts, the dates of which it does not appear to be necessary or important to give.

SEC. 2101. The concurrence of twelve grand jurors is required to find an indictment (bb).

SEC. 2102. When so found, it must be indorsed "a true bill," and the indorsement signed by the foreman.

SEC. 2103. When an indictment is found, the names of all witnesses who were examined must be written at the foot of or on the indictment (cc).

SEC. 2104. The indictment must be presented by the foreman of the grand jury to the court, and filed with the clerk, and remain in his office as a public record (dd).

SEC. 2105. The indictment must be direct and certain as regards:

First. The party charged.

Second. The offense charged.

Third. The county in which the offense was committed.

Fourth. The particular circumstances of the offense charged where they are necessary to constitute a complete offense (ee).

SEC. 2106. The indictment is sufficient if it can be understood therefrom:

First. That it was found by a grand jury of a county impaneled in a court having authority to receive it, though the name of the court is not accurately stated (ff).

Second. That the offense was committed within the jurisdiction of the court, and at some time prior to the time of finding the indictment.

Third. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment on conviction, according to the right of the case.

SEC. 2107. No indictment is insufficient, nor can the trial, judgment or other proceeding thereon be affected by any defect which does not tend to the prejudice of the substantial rights of the defendant on the merits (gg).

(bb) But a lawful grand jury consists of sixteen persons—no more and no less; and an indictment found by a less number or a greater number is invalid. *State v. Hawkins*, 10—71; *Harding v. State*, 22—210.

(cc) The omission to indorse on an indictment the names of witnesses examined before the grand jury is not ground of demurrer. *State v. Brandon*, 28—410. Nor cause for setting aside the indictment. *State v. Johnson*, 33—174.

(dd) The indictment must be presented by the foreman *in the presence* of the grand jury. *Robinson v. State*, 33—180. The record must show that the indictment was brought into court. The indorsement of the clerk upon the indictment, "filed in open court," is not sufficient. *McKensie v. State*, 24—636; *Holcomb v. State*, 31—427; *Chancellor v. State*, 33—815. The omission in the record may be supplied by a *nunc pro tunc* entry. *State v. Goven*, 12—62; *Green v. State*, 19—178; *James v. State*, 41—451. Where indictment has been recorded, see note (qq) to SEC. 2128. For form of entry by clerk when the party indicted is not in custody, see *Fitzpatrick v. State*, 37—238.

(ee) As to the degree of certainty required in the statement of the offense charged, see *Graham v. State*, 1—171; *Anderson v. State*, 5—444; *Thompson v. State*, 26—323; *Edwards v. State*, 27—493; *Barton v. State*, 29—68; *Dixon v. State*, *Ib.*, 165; *McPherson v. State*, *Ib.*, 225; *Sikes v. State*, 30—496; *Clary v. State*, 33—561; *State v. Parker*, 34—158; *Haney v. State*, *Ib.*, 263; *Lacefield v. State*, *Ib.*, 275; *Howard v. State*, *Ib.*, 433; *J. Johnson v. State*, 36—242; *Curtis v. State*, *Ib.*, 284; *State v. Graham*, 38—519. The same particularity is not required in an indictment for an assault with intent to commit an offense as in an indictment for the actual commission of the offense. *Lacefield v. State*, 34—275. It is necessary in charging a felony to allege that the act was feloniously done. *Mott v. State*, 29—147; *Edwards v. State*, 25—444; *Milan v. State*, 24—346; *State v. Eldridge*, 12—608. An indictment charging an offense in the alternative is bad. *Thompson v. State*, 37—408; *Cooper (J. Z.) v. State*, *Ib.*, 412; *Cooper (G. M.) v. State*, *Ib.*, 421. As to when it is sufficient to follow the language of the statute in statutory offenses, see *Gabe v. State*, 6—519; *Smith Bell v. State*, 10—536; *Moffatt v. State*, 11—169; *State v. Eldridge*, *supra*; *State v. Adams*, 16—497; *Medlock v. State*, 18—363; *Lemon v. State*, 19—171; *Guest v. State*, *Ib.*, 405; *State v. Collins*, *Ib.*, 587; *State v. Hoover*, 31—676; *State v. Moser*, 33—140; *State v. Witt*, 38—216; *State v. Graham*, *Ib.*, 519; *State v. Snyder*, 41—226.

Where an offense, as defined by statute, is essentially the same as that defined by the common law, an indictment good at common law is good upon the statute. *Roberts v. State*, 21—183.

As to when it is necessary to negative a proviso or exception in a statute, see *Brittin v. State*, 10—299; *Matthews v. State*, 24—484; *Wilson v. State*, 33—557; *Walker v. State*, 35—386; *Wilson v. State*, *Ib.*, 414.

(ff) See note (ee) to preceding section.

(gg) See note (ee) to SEC. 2105.

SEC. 2108. An indictment, except in cases mentioned in the next section, must charge but one offense, but, if it may have been committed in different modes and by different means, the indictment may allege the modes and means in the alternative (hh).

SEC. 2109. The offenses named in each of the subdivisions of this section may be charged in one indictment:

First. Larceny, and knowingly receiving stolen property.

Second. Larceny, and obtaining money or property on false pretense.

Third. Larceny and embezzlement.

Fourth. Robbery and burglary.

Fifth. Robbery, and an assault with intent to rob.

Sixth. Passing or attempting to pass counterfeit money or bank notes, knowing them to be such, and having in possession counterfeit money or bank notes, knowing them to be such, with the intention of circulating the same (ii).

SEC. 2110. An error as to the name of the defendant shall not vitiate the indictment or proceedings thereon, and, if his true name is discovered at any time before execution, an entry shall be made on the minutes of the court of his true name, referring to the fact of his being indicted by the name mentioned in the indictment, and the subsequent proceedings shall be in the true name, substantially as follows:

The State of Arkansas
against

A. B., indicted by the name of C. D. (jj). }

SEC. 2111. Where an offense involves the commission, or an attempt to commit, an injury to person or property, and is described in other respects with sufficient certainty to identify the act, an erroneous allegation as to the person injured, or attempted to be injured, is not material (kk).

SEC. 2112. The statement in the indictment as to the time at which the offense was committed is not material, further than as a statement that it was committed before the time of finding the indictment, except when the time is a material ingredient in the offense (ll).

SEC. 2113. If the indictment contains no statement of the place in which the offense was committed, it shall be considered as charged therein that it was committed in the local limits of the jurisdiction of the court in which the grand jury was impaneled (mm).

SEC. 2114. In pleading a judgment, or other determination of, or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment, determination or proceed-

(hh) See *State v. Jourdan*, 32—203; *State v. Brewer*, 33—176; *Howard v. State*, 34—433; *State v. Lancaster*, 36—55; *State v. Rhea*, 38—555; *Bridges v. State*, 37—224.

(ii) Burglary and larceny may be joined in the same indictment. SEC. 1621; *Dodd v. State*, 33—517; *Toliver v. State*, 35—395; *Watkins v. State*, 37—370. Distinct larcenies can not be joined in the same indictment. *State v. Jourdan*, 32—203. A count for an affray and one for an assault and battery can not be joined. *State v. Brewer*, 33—176. But if the count for an affray include a charge of assault and battery the two counts may be joined. *Ib.* Uttering vulgar or profane language at the domicile of another, and making violent threats against him there, can not be joined in the same indictment. *State v. Lancaster*, 36—55.

(jj) See *State v. Webster*, 30—166; *Phillips v. State*, 35—384.

(kk) See *State v. Seely*, 30—162, assault and battery; *State v. Jourdan*, 32—203, larceny; *Edmonds v. State*, 34—720, murder; *Johnson v. State*, 40—453, selling liquor.

(ll) See *Lee v. State*, 26—260; *State v. Hoover*, 31—676; *Scoggins v. State*, 32—205; *State v. Gill*, 33—129.

(mm) When the name of the county appears in the caption, and is referred to in the body of the indictment, it is sufficient. *State v. Hunn*, 34—321. See also *Thetstone v. State*, 32—179.

ings may be stated to have been duly given or made. Where it is necessary to prove the statement on the trial, the facts conferring the jurisdiction must be established.

SEC. 2115. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application, to the party libeled, of the defamatory matter; but it is sufficient to state generally that the same was published concerning him.

SEC. 2116. In an indictment for perjury it is not necessary to set forth the pleadings, record or proceedings with which the oath is connected, so that the substance of the controversy, or matters in respect to which the offense was committed, is properly stated; nor is it necessary to set forth the commission or authority of the court or person before whom the oath alleged to be false was taken, so that it be stated in what court or before whom it was taken, and that the court or person was authorized to administer the oath.

SEC. 2117. When a written instrument, which is the subject of an indictment for forgery, larceny or other offense has been withheld or destroyed by the act or procurement of the defendant, and such destruction or withholding is alleged in the indictment and proved on the trial, a misdescription of the instrument is immaterial.

SEC. 2118. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment.

SEC. 2119. The words used in a statute to define an offense need not be strictly pursued in an indictment, but other words conveying the same meaning may be used.

SEC. 2120. The words used in an indictment must be construed according to their usual acceptance in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

SEC. 2121. The indictment must contain:

First. The title of the prosecution, specifying the name of the court in which the indictment is presented, and the name of the parties.

Second. A statement of the acts constituting the offense, in ordinary and concise language, and in such a manner as to enable a person of common understanding to know what is intended (nn).

SEC. 2122. It may be substantially in the following form:

PULASKI CIRCUIT COURT.

The State of Arkansas }
 against }
 George Smith.

The grand jury of Pulaski County, in the name and by the authority of the State of Arkansas, accuse George Smith of the crime of (here insert the name of the offense, if it have one, such as treason, murder, manslaughter, arson, larceny, rape or the like, or if it have no general name, then a brief general description as given by law), committed as follows, viz.: The said George Smith, on the — day of —, 18—, in the county aforesaid (here

(nn) See note to SEC. 2105.

insert the acts constituting the offense), against the peace and dignity of the State of Arkansas (oo).

Crim. Code, secs. 117-138.

SEC. 2123. No indictment shall be void or voidable because any of the grand jury fail to possess any of the qualifications required by law. *Crim. Code, sec. 406, as amended 1871.*

SEC. 2124. When an indictment shall be found against any person, for any offense known to the laws of this state, not in actual confinement, or held by recognizance to answer thereto, such indictment shall not be open to the inspection of any person except the judge, clerk of the court and the prosecuting attorney, until the defendant shall have been arrested (pp).

SEC. 2125. No judge, clerk, prosecuting attorney or other officer of any court shall disclose the fact of any indictment being found until the defendant therein shall have been arrested or recognized to answer the same.

SEC. 2126. The provisions of the two preceding sections shall not extend to any officer making such disclosure by the issuing or in the execution of any process on such indictment, or in any other manner, when it shall become necessary in the discharge of any official duty. *Rev. Stat., chap. 45, secs. 86, 87, 89.*

SEC. 2127. It shall be the duty of the clerk, whenever an arrest shall have been made of any person against whom an indictment has been found by the grand jury, properly returned, to record such indictment, with the entries thereon, in a book to be kept by him for that purpose.

SEC. 2128. In all cases where an indictment may be lost or destroyed, or where the same can not be found, a copy of the record thereof, as provided in the preceding section, duly certified by the clerk under his hand and the seal of the court, shall be taken and used for all purposes in any of the courts of this state, the same as the original indictment (qq). *Act March 19, 1881.*

SEC. 2129. In all cases where any fine or penalty shall be imposed by any statute, as a punishment for any offense, and no other provision is made for the recovery thereof, the same may be recovered by indictment.

SEC. 2130. If there shall be, at any time, pending against the same defendant, two indictments for the same offense, or two indictments for the same matter, although charged as different offenses, the indictment first found shall be deemed to be suspended by such second indictment, and shall be quashed (rr).

SEC. 2131. No trial on an indictment against several shall be delayed because some of the defendants have not been arrested, but those arrested or in custody shall be tried, and the cause continued as to those not arrested. *Rev. Stat., chap. 45, secs. 85, 90, 101.*

(oo) The form given in this section need not be strictly followed. *Lacefield v. State*, 34—275. Indictments shall conclude: "Against the peace and dignity of the State of Arkansas." *Art. VII, sec. 49, Const.*; *Anderson v. State*, 5—414. Each count must so conclude, and any count omitting the proper conclusion should be quashed. *State v. Cadle*, 19—613; *State v. Hazle*, 20—156. It is not necessary that an indictment should be signed by the prosecuting attorney. *Anderson v. State, supra*; *Watkins v. State*, 37—370.

(pp) See *Humphries v. State*, 33—713; *Fitzpatrick v. State*, 37—238.

(qq) It is legally presumed from the fact that the clerk recorded an indictment that it was found by the grand jury and returned into court; and in case of the loss or destruction of the original, the defendant may be tried and convicted on a copy from the record. *Miller v. State*, 40—488.

(rr) But the pendency of another indictment must be taken advantage of by plea. *State v. Barkman*, 7—387. It is irregular to try a defendant upon two indictments at once, even with his consent. *McClellan v. State*, 32—609. See also *State v. Clark, Id.*, 231.

X.—PROCESS UPON AN INDICTMENT.

SECTION

2132. Process on indictment, defined.
 2133. how issued and re-issued.
 2134. court to order on indictment.
 2135. Bench warrant, form of.
 2136. indorsement on, as to bail.
 2137. bail on, when not executed by sheriff.

SECTION

2138. Bench warrant issued on forfeiture of bail.
 2139. Summons on indictment, form of.
 2140. how issued and served.
 2141. only issued on indictment for misdemeanor, and not then if.
 2142. Bench warrant may issue on any indictment.

SECTION 2132. The process on an indictment consists of the writs for arresting or summoning the defendant to appear and answer the indictment.

SEC. 2133. The process of arrest shall be issued by the clerk, upon the order of the court, and may be re-issued from time to time by order of the attorney for the state (ss).

SEC. 2134. Upon an indictment being found, if the defendant is not in custody or on bail, the court shall forthwith make an order for process to be issued thereon, designating whether it shall be for arresting or summoning the defendant; and if for arresting the defendant, and the offense charged is bailable, the sum in which he may be admitted to bail shall be fixed (tt).

SEC. 2135. The process of arrest on an indictment shall be a bench warrant, and may be substantially in the following form :

PULASKI CIRCUIT COURT, STATE OF ARKANSAS.

To any sheriff, coroner, jailer, constable, marshal or policeman in the state (uu) :

You are hereby commanded forthwith to arrest A. B., and bring him before the Pulaski Circuit Court, to answer an indictment found in that court against him for felony (or misdemeanor, as the case may be), or, if the court be adjourned for the term, that you deliver him to the custody of the jailer of Pulaski County.

Given under my hand and seal of said court, this ——— day of ———, 18—. C. D., Clerk P. C. C.

SEC. 2136. If the offense be bailable, an indorsement shall be made on the bench warrant, substantially as follows :

The defendant is to be admitted to bail in the sum of ——— dollars, and if he desire to give bail, it may be taken by the sheriff of the county in which he is arrested, or the sheriff of Pulaski County.

SEC. 2137. If the bench warrant be executed by any other officer than a sheriff, such officer, at the defendant's request, shall take him before a sheriff of the county in which he is arrested, or of the county in which the indictment was found, for the purpose of giving bail (vv).

SEC. 2138. If the defendant is on bail, and the indictment is for an offense not bailable, and he appears in pursuance of the bail-bond, he shall be forthwith committed to jail; and if he does not appear, on being required by the court, the bond shall be forfeited, and a bench warrant be issued for his arrest.

SEC. 2139. The summons on an indictment may be substantially in the following form :

(ss) See *Humphries v. State*, 33—713.

(tt) See *Humphries v. State*, 33—713.

(uu) See *Winkler v. State*, 32—539.

(vv) See *Blevins v. State*, 31—53.

PULASKI CIRCUIT COURT, STATE OF ARKANSAS.

To any sheriff, coroner, jailer, constable, marshal or policeman in this state:

You are hereby commanded to summon A. B. to appear in the Pulaski Circuit Court on the first day of its next (June) term, to answer an indictment for misdemeanor found against him in that court.

Given under my hand the —— day of ——, 18—.

C. D., Clerk P. C. C.

SEC. 2140. The summons shall be issued and served in the same manner as a summons in civil actions.

SEC. 2141. The summons shall only be issued on indictments for misdemeanor, where the court has not ordered a bench warrant to issue, and may be issued without any order by the court.

SEC. 2142. The court may, at its discretion, order a bench warrant to be issued on any indictment; but where the punishment is limited to a fine of one hundred dollars, or less, a bench warrant shall not be issued, unless the court is satisfied that there is reason to believe the defendant will escape punishment if a bench warrant is not issued. *Crim. Code, secs. 139-150.*

XI.—PRODUCTION OF EVIDENCE.

SECTION

2143. Clerk to issue subpoenas for witnesses.

2144. Law governing and summoning witnesses in civil actions, applies in criminal cases, except.

SECTION

2145. Court may compel production of written documents, etc.

2146, 2147, 2148, 2149. Depositions may be taken by defendants, when and how.

SECTION 2143. The clerk of the court, upon the request of the prosecuting attorney, or of the defendant, or his attorney, shall issue subpoenas for witnesses.

SEC. 2144. The provisions of law in civil actions shall apply to and govern the summoning and coercing the attendance of witnesses, and compelling them to testify in all prosecutions, criminal or penal actions or proceedings, except that the attendance of witnesses residing in any part of the state may be coerced, and it shall never be necessary to tender to the witnesses any compensation for expenses or otherwise before process of contempt shall issue.

SEC. 2145. The court, on motion of either party, may, by its order and process, compel the production of any written document, or any other thing which may be necessary or proper to be produced or exhibited as evidence on the trial, and may punish a disobedience of its orders or process as in case of witnesses refusing to testify.

SEC. 2146. The court, or judge in vacation, or a judge of the supreme court, may authorize a defendant to take the deposition of a material witness where there are reasonable grounds to apprehend that, before the trial, the witness will die or become mentally incapable of giving testimony, or physically incapable of attending the trial, or of becoming a non-resident of the state (ww).

(ww) Defendants in criminal cases are entitled to take the depositions of witnesses residing out of the state. *Giboney v. Rogers, judge. 32-462.* And the supreme court will compel the circuit court by mandamus to make the necessary order. *Id.*

SEC. 2147. The materiality of the testimony and the reason for taking his deposition shall be shown by affidavit.

SEC. 2148. The court or judge shall, by written order, prescribe the manner of taking the deposition, whether by interrogatories or upon notice to the prosecuting attorney.

SEC. 2149. Upon the death of the witness, or his becoming mentally incapable of testifying, or physically incapable of attending the trial or giving his testimony, or a non-resident of the state, and absent therefrom, so that he could not be summoned, the deposition taken in pursuance of such order may be read as evidence, *provided*, that the ground of non-residence and absence from the state shall not be sufficient unless the defendant makes an affidavit that he has tried in good faith to procure the attendance of such witness and been unable to do so. *Crim. Code, secs. 151-154.*

XII.—ARRAIGNMENT OF AND PLEADINGS BY DEFENDANT.

SECTION

- 2150. Arraignment defined.
- 2151. Counsel appointed for defendant, when.
- 2152. Copy of indictment for capital offense to be furnished prisoner, when.
- 2153. in all cases, defendant entitled to, on demand, etc.
- 2154. Arraignment only made in felony; dispensed with, when.
- 2155. Defendant believed to be insane, trial to be postponed; proceeding.
- 2156. On arraignment, defendant must move to set aside indictment, or plead.

SETTING ASIDE INDICTMENT.

- 2157. Grounds of motion to set aside.
- 2158. Motion sustained, case to be resubmitted to grand jury; proceedings.
- 2159. New indictment not found, defendant discharged.
- 2160. Motion overruled, defendant must plead.
- 2161. *Nolle prosequi* not to be entered without leave of court.

PLEADINGS BY DEFENDANT.

- 2162. Demurrer or plea, only pleading by defendant.
- 2163. Must be made in open court, etc.

DEMURRER.

- 2164. Demurrer, when proper.

SECTION

- 2165. Demurrer, proceedings on, when sustained for want of local jurisdiction.
- 2166. same proceedings where same facts appear in proof on trial.
- 2167. not sustained, when.
- 2168. judgment on, when final.
- 2169. sustained, case to be submitted to another grand jury, when.
- 2170. overruled, defendant may plead.
- 2171. judgment on, for defendant, does not bar another prosecution, when.

PLEAS BY DEFENDANT.

- 2172. Pleas, number and kind of.
- 2173. of guilty can only be put in by defendant in open court.
- 2174. of guilty may be withdrawn.
- 2175. of not guilty, what given in evidence under.
- 2176. Acquittal or conviction bars another prosecution for the same offense.
- 2177. Where offense consists of different degrees, bars all.

FORM OF RECORD ENTRY OF DEMURRER AND PLEA.

- 2178. Entry, what to state.
- 2179. No joinder in demurrer, or reply necessary.

SECTION 2150. An arraignment is the reading of the indictment by the clerk to the defendant, and asking him if he pleads guilty or not guilty to the indictment (xx). *Crim. Code, sec. 155.*

SEC. 2151. If any person about to be arraigned upon an indictment for a

(xx) A *nunc pro tunc* order after trial, showing that the accused was arraigned before trial, can not be made in the absence of the prisoner. *Baker v. State*, 39—180. As to arraignment on change of venue, see *Hudley v. State*, 36—237.

felony be without counsel to conduct his defense, and shall be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner at all reasonable hours (yy).

SEC. 2152. It shall be the duty of the clerk of the court in which an indictment against any person, for a capital offense, may be pending, whenever the defendant shall be in custody, to make out a copy of such indictment, and cause the same to be delivered to the defendant or his counsel at least forty-eight hours before he shall be arraigned on such indictment; but the defendant may, at his request, be arraigned and tried at any time after the service of such copy (zz).

SEC. 2153. Every person who shall be indicted for an offense, who shall be in custody, or held by recognizance to appear and answer such indictment, shall, on demand, and on payment of the fees allowed by law therefor, be entitled to a copy of the indictment and all indorsements thereon (aaa). *Rev. Stat., chap. 45, secs. 110-112.*

SEC. 2154. The arraignment shall only be made in indictments for felony, and may be dispensed with by the court, with the defendant's consent (bbb).

SEC. 2155. If the court shall be of the opinion that there are reasonable grounds to believe that the defendant is insane, all proceedings in the trial shall be postponed until a jury be impaneled to inquire whether the defendant is of unsound mind (ccc); and if the jury shall find that he is of unsound mind the court shall direct that he be kept in prison, or conveyed by the sheriff to the lunatic asylum, and there kept in custody by the officers thereof until he is restored, when he shall be returned to the sheriff, on demand, to be reconveyed by him to the jail of the county (ddd).

SEC. 2156. Upon the arraignment, or upon the call of the indictment for trial, if there is no arraignment, the defendant must either move to set aside the indictment or plead thereto (eee).

SETTING ASIDE INDICTMENT.

SEC. 2157. The motion to set aside the indictment can only be made on the following grounds:

(yy) If the record is silent, the supreme court will presume that the court below assigned counsel to a prisoner charged with felony. *Brown v. State*, 12—623. Such counsel are not entitled to compensation. *Arkansas County v. Freeman & Johnson*, 31—266.

(zz) It is only in capital cases, when the accused is in custody, that it is made the duty of the clerk, without a fee, to furnish a copy of the indictment under this section. *Howard v. State*, 37—265. Service of a copy of the indictment on the accused while he is in prison, and in the absence of his counsel, is sufficient. *Hurley v. State*, 29—17. A defendant who is at large on bail is not entitled to service of a copy of the indictment under this section. He might apply to the clerk and get a copy by paying for it. *Dawson v. State, Ib.*, 116. The counsel of a defendant indicted for a capital offense can not, in the absence of the defendant, waive further time as to copy of the indictment. *Oeborn v. State*, 24—629.

In the absence of any showing of a demand of a copy of the indictment, and of any affirmative showing that a copy was not furnished to defendant before trial, it will be presumed, on appeal, that it was done, or that he waived it. *Wright v. State*, 42—94.

A prisoner is not entitled to be furnished with a list of the jurors before trial. *Benton v. State*, 30—328; *Wright v. State*, 35—639; *Green v. State*, 38—304.

(aaa) See *Dawson v. State*, 29—116; also, note (zz) to preceding section.

(bbb) See *Baker v. State*, 39—180.

(ccc) See notes to SECS. 2188, 2195.

(ddd) But see SECS. 4547-4565.

(eee) It is error to proceed to trial without a plea from the defendant. *Lacefield v. State*, 34—275; *Perry v. State*, 37—54; *Baker v. State*, 39—180.

First. A substantial error in the summoning or formation of the grand jury (fff).

Second. That some person other than the grand jurors was present before the grand jury when they finally acted upon the indictment.

Third. That the indictment was not found and presented as required by law.

SEC. 2158. If the motion is sustained the court shall make an order that the case be submitted to another grand jury, to be assembled at that or the next term of the court, and the defendant, if in custody, shall be remanded to jail, or if on bail the bail shall be liable for the defendant's appearance to answer a new indictment, if one be found.

SEC. 2159. Unless, however, a new indictment is found before the final discharge of the next grand jury, the defendant shall be discharged from custody or bail, unless for good cause shown the court shall otherwise order.

SEC. 2160. If the motion is overruled the defendant shall be required to plead to the indictment. *Crim. Code, secs. 156-162.*

SEC. 2161. No attorney for the state shall enter a *nolle prosequi* on any indictment, or in any other way discontinue or abandon the same, without the leave of the court in which such indictment is pending being first entered on the minutes. *Rev. Stat., chap. 45, sec. 109.*

PLEADINGS BY DEFENDANT.

SEC. 2162. The only pleading on the part of the defendant is a demurrer or a plea.

SEC. 2163. The demurrer and plea must be put in, in open court, and may be oral, but an entry thereof must be made on the record.

DEMURRER.

SEC. 2164. A demurrer is proper:

First. Where it appears from the indictment that the offense was not committed within the local jurisdiction of the court (ggg).

Second. Where it does not substantially conform to the requirements of sections 2105 to 2122, both inclusive.

Third. When more than one offense is charged in the indictment, except as provided in sections 2109 and 1621.

Fourth. Where the facts do not constitute a public offense (hhh).

Fifth. Where the indictment contains matter which is a legal defense or a bar to the prosecution.

(fff) When the grand jury has been impaneled and the indictment returned by them into court, irregularities in summoning or impaneling them and questions as to the qualifications of the jurors are waived by a plea of not guilty to the indictment. *Miller v. State*, 40—488; *Shropshire v. State*, 12—190; *Fenally v. State*, *Ib.*, 630; *Brown v. State*, 13—96; *Stewart v. State*, *Ib.*, 744; *Straughan v. State*, 16—41; *Dixon v. State*, 29—165, and cases cited; *Wright v. State*, 42—94. It is irregular for the court to designate by name particular persons among the bystanders to complete the grand jury; but such irregularity would not invalidate all the proceedings of the grand jury, and is not sufficient ground for setting aside the indictment. *Runnels v. State*, 28—121.

(ggg) When the court sees it has no jurisdiction, it should quash the indictment of its own motion. *State v. Kirkpatrick*, 32—117.

(hhh) A general demurrer to an indictment containing several counts should be overruled, if either count be good. *Cooper (I. Z.) v. State*, 37—412.

SEC. 2165. If the demurrer is sustained on account of its appearing that the offense was not committed within the jurisdiction of the court, and it does appear that the offense is a felony, and was committed in the jurisdiction of another court in this state, the court shall make an order that the clerk transmit to the clerk of the court having jurisdiction of the offense a copy of the indictment and all the original papers, including the bail-bond, if any there be; and, if the defendant be in custody, that he be carried and delivered, with a copy of the order, to the jailer of the county to which the papers are directed to be transmitted; and said order, and the proceedings in obedience thereto, shall operate in all respects as an order of a magistrate holding a defendant to answer the charge; and the bail, if any, shall be liable for the appearance of the defendant to answer an indictment in the court to which the papers are transmitted, and shall have the right of surrendering the defendant to the jailer of that county, or to that court.

SEC. 2166. The same orders and proceedings may be had whenever it appears on the trial, by proof, that the offense, being a felony, was committed out of the jurisdiction of the court in which the indictment was found, but within the jurisdiction of another court of this state.

SEC. 2167. Where the indictment improperly charges more than one offense, the attorney for the state may dismiss one of them, and thereupon the demurrer shall not be sustained on that ground.

SEC. 2168. If the demurrer is sustained because the indictment contains matter which is a legal defense or bar to the indictment, the judgment shall be final, and the defendant discharged from any further prosecution for the offense (iii).

SEC. 2169. If the demurrer is sustained on any other grounds than those mentioned in the last four sections, the case may be submitted to another grand jury, and an order to that effect may be made by the court on the record; whereupon the defendant shall be held in custody, or on bail, in the manner and for the time provided in sections 2158 and 2159 (jjj).

SEC. 2170. If the demurrer is overruled, the defendant has a right to plead to the indictment; if he fails to do so, final judgment shall be entered against him, and, if necessary, a jury impaneled to fix the punishment.

SEC. 2171. The dismissal of the indictment by the court, on demurrer, except as provided in section 2168, or for an objection to its form or substance taken on the trial, or for variance between the indictment and the proof, shall not bar another prosecution for the same offense.

PLEAS BY DEFENDANT.

SEC. 2172. There are but three kinds of pleas to an indictment:

First. A plea of guilty (kkk).

(iii) See *State v. Gill*, 33—129.

(jjj) See *State v. Gill*, 33—129; *State v. McMinn*, 34—160. This section does not authorize the court to dismiss a valid indictment after arraignment, plea and impanelling of the jury, so as to hold the accused for trial on another indictment for the same offense. *Lee v. State*, 26—260, and cases cited. As to when jeopardy attaches, see same case.

(kkk) By the plea of guilty, defendant but confesses himself guilty in manner and form as charged in the indictment, and if the indictment charges no offense against the law, none is confessed. *Fletcher v. State*, 12—169.

Second. Not guilty.

Third. A former conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty (lll).

SEC. 2173. The plea of guilty can only be put in by the defendant himself in open court.

SEC. 2174. At any time before judgment, the court may permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

SEC. 2175. The plea of not guilty is a denial of every material allegation in the indictment; and all matters of fact tending to establish a defense, other than a former conviction or acquittal, may be given in evidence under it.

SEC. 2176. An acquittal by a judgment on a verdict, or a conviction, shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the acquittal or conviction took place (mmm).

SEC. 2177. Where an offense consists of different degrees, a conviction or acquittal by judgment upon a verdict shall be a bar to another prosecution for the offense in any of its degrees (nnn).

FORM OF RECORD, ENTRY OF DEMURRER AND PLEA.

SEC. 2178. The entry on the record of the demurrer and pleas may be substantially in the following form:

First. A demurrer: "The defendant demurs to the indictment."

Second. A plea of guilty: "The defendant pleads that he is guilty of the offense charged in the indictment."

Third. A plea of not guilty: "The defendant pleads that he is not guilty of the offense charged in the indictment."

Fourth. A plea of former acquittal or conviction: "The defendant pleads that he has been acquitted (or convicted, as the case may be,) of the offense

(lll) Where the defendant pleads former acquittal, and not guilty, the plea of former acquittal should be first tried. *Lee v. State*, 26—260.

A plea of former conviction or acquittal, before a justice of the peace, of a felony, or of a misdemeanor included in a felony, will not bar a prosecution for the felony in the circuit court. *State v. Nichols*, 38—350. But see *Southworth v. State*, 42—270.

(mmm) But if upon a former indictment the defendant could not have been convicted of the offense described in a second indictment, an acquittal upon the former is no bar to the latter. *State v. McMinn*, 34—160; *Williams v. State*, 42—35.

Where the defendant is indicted for the larceny of several articles, tried, convicted as to part of the articles, a new trial granted him, a new indictment afterward found against him for the same larceny, and the original indictment quashed, he can not be put in jeopardy again on the new or a subsequent indictment as to the articles which he was acquitted of stealing, or other articles embraced in the same larceny but not included in the first indictment; but he may be tried again upon the second indictment for the larceny of the articles he was found guilty of stealing under the first indictment. *State v. Clark*, 32—231.

The mere filing of an affidavit before a justice of the peace and issuance of a warrant of arrest will not bar a subsequent indictment for the same offense. *James Bradley v. State*, *Id.*, 722.

A conviction of assault and battery before a justice of the peace on the confession or information of the offender is no bar to an indictment for the same offense. *Id.*

When, after conviction, a new trial is granted the defendant on his own motion, he may be tried again for the same offense. *Johnson v. State*, 29—31.

A conviction of murder in the second degree on an indictment for murder in the first degree is an implied acquittal of murder in the first degree, and the defendant can not again be put in jeopardy for the higher offense; and the court should so instruct the jury, whether the former acquittal is pleaded or not. *Id.* See also *McKensie v. State*, 26—334. For a full discussion of the question of "former jeopardy," see *Lee v. State*, *Id.*, 260. See also *Williams v. State*, 42—35.

(nnn) See *State v. Nichols*, 38—550.

charged in the indictment, by the judgment of —— court (naming it), rendered on the —— day of —— (naming the time)" (ooo).

SEC. 2179. Neither a joinder in demurrer nor a reply to the plea of former acquittal or conviction shall be necessary; but the demurrer shall be heard and decided, and the plea shall be considered as controverted by denial, and by any matter of avoidance that may be shown in evidence. *Crim. Code, secs. 163-180.*

XIII.—ISSUES, HOW TRIED.

SECTION

2180. Issue of law arises on demurrer.

2181. of law tried by the court.

2182. of fact arises on plea.

SECTION

2183. Issue of fact tried by jury.

2184. of fact, court may try, when.

SECTION 2180. An issue of law arises on a demurrer to the indictment.

SEC. 2181. Issues of law shall be tried by the court.

SEC. 2182. An issue of fact arises upon a plea of not guilty, or of former acquittal or conviction.

SEC. 2183. Issues of fact shall be tried by a jury.

SEC. 2184. In all cases of misdemeanors the parties may, by consent, waive a jury and submit the law and facts to the court; in which case the court shall find the facts and report upon them separate from its decision upon the law (ppp). *Crim. Code, secs. 181-183.*

XIV.—TIME AND POSTPONEMENT OF TRIAL.

SECTION

2185. Trial, when may be, if defendant in custody or on bail.

2186. to be continued to first day of next term, when.

2187. all prosecutions to stand for, on the day to which docketed, when.

POSTPONEMENT OF.

2188. Trial may be postponed, when.

2189. postponement of, by defendant to be by rules in civil actions.

SECTION

2190. Trial, postponement of may be on official statement of prosecuting attorney.

2191. defendant in prison and not brought to, before end of second term, discharged, unless.

2192. defendant on bail and not brought to, before end of third term, discharged, unless.

2193. not had for want of time, etc., not to work discharge of defendant.

2194. may be continued to succeeding term by court, when.

SECTION 2185. If the defendant is in custody, or on bail, when the indictment is found, the trial may take place at the same term of the court, on a day to be fixed by the court (qqq).

(ooo) As to what plea should contain, see *State v. Clark*, 32—231; *Johnson v. State*, 29—31.

A plea of former conviction which does not verify the alleged conviction by the record is bad on demurrer. *James Bradley v. State*, 32—722, and cases cited.

(ppp) Under this section the court may, by consent, try a misdemeanor. *James Bradley v. State*, 32—722.

(qqq) Where a trial has been properly conducted in other respects, a judgment of conviction will not be reversed simply because the record fails to show that the court set a day for trial. *Wallace v. State*, 28—531.

SEC. 2186. If not tried at the same term all indictments, together with all other criminal prosecutions and penal actions, shall be docketed for the first day of the next term of the court, unless a different day be fixed by the order of the court.

SEC. 2187. All prosecutions shall stand for trial on the day to which they are docketed, where the defendant is in custody, or on bail, or has been summoned three days before the commencement of the term.

POSTPONEMENT OF.

SEC. 2188. When an indictment is called for trial, or at any time previous thereto, the court, upon sufficient cause shown by either party, may direct the trial to be postponed to another day in the same term, or to another term (rrr).

SEC. 2189. The provisions of law in civil actions, in regard to postponements of the trial of actions, shall apply to the postponement of prosecutions on behalf of defendant (sss). *Crim. Code, secs. 186-190.*

SEC. 2190. The attorney for the state shall not be required, in order to obtain a continuance of a criminal case, to make an affidavit to the causes for continuance; his official statement in writing shall be sufficient.

SEC. 2191. If any person indicted for any offense, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offense, which shall be held after the finding of such indictment, he shall be discharged so far as relates to the offense for which he was committed, unless the delay shall happen on the application of the prisoner.

SEC. 2192. If any person indicted for any offense, and held to bail, shall not be brought to trial before the end of the third term of the court in which such indictment is pending, which shall be held after the finding of such indictment and holding to bail thereon, he shall be discharged so far as relates to such offense, unless the delay happen on his application.

SEC. 2193. Nothing in the two preceding sections shall be so construed as to discharge any person who may have been indicted for any criminal offense, on account of the failure of the judge to hold any term of the court, or for the want of time to try such person at any term of the court.

SEC. 2194. If, when application is made for the discharge of any defendant, under either of the three preceding sections, the court shall be satisfied that there is material evidence on the part of the state which can not be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued to the next term, and the prisoner remanded or admitted to bail as the case may require. *Rev. Stat., chap. 45, secs. 159, 168-172.*

(rrr) No person should be tried upon a charge of felony when he has not reason enough, whether in consequence of intoxication or other cause, to appreciate his peril or act advisedly with his counsel. *Taffe v. State*, 23-34.

(sss) Continuances in criminal as well as in civil cases, as a general proposition, are within the sound discretion of the court, and its refusal to grant a continuance is never ground for a new trial, unless it clearly appears to have been an abuse of such discretion and manifestly operates as a denial of justice. *Thompson v. State*, 26-323.

XV.—CHANGE OF VENUE (ttt).

SECTION

2195. Change of venue when inhabitants of county prejudiced against defendant.
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2197. Cause of removal to be specified in order.
2198. Order to be entered of record; in vacation, signed by judge.
2199. Defendant to enter into recognizance.
2200. Recognizance may be taken by whom.
2201. Order not effectual unless recognizance entered into.
2202. If defendant in actual custody, court to order his removal to county of trial.
2203. Duty of sheriff on such order.

SECTION

2204. Clerk to make transcript.
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2206. Transcript to be filed when received.
2207. Defendant and witnesses bound to attend, having notice.
2208. Order of removal in term time deemed notice.
2209. Expenses of removal, how adjusted and allowed.
2210. Penalty for clerk failing to perform duty.
2211. Where several defendants, the case removed as to applicant only.
2212. But one change granted.

SECTION 2195. Any criminal cause pending in any circuit court may be removed by the order of such court, or by the judge thereof in vacation, to the circuit court of another county, whenever it shall appear, in the manner hereinafter provided, that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair and impartial trial can not be had therein (uuu).

SEC. 2196. Such order of removal shall be made on the application of the defendant by petition setting forth the facts, verified by affidavit, if reasonable notice of the application be given to the attorney for the state, and the truth of the allegations in such petition be supported by the affidavit of some credible person (vvv).

SEC. 2197. Every order for the removal of a criminal cause shall specify the cause of removal and designate the county to which the cause is to be removed (www).

SEC. 2198. Such order, if made in term time, shall be entered on the record of the proceedings of the court; and if made by a judge in vacation, shall be in writing, and be signed by such judge, and shall be filed by the clerk with the petition, if any, as a part of the record.

SEC. 2199. When such order shall be made, the defendant, if not in custody, and the offense charged be bailable, shall enter into recognizance, with sufficient security, for his appearance to answer the charges in the court to which the cause is to be removed on the first day of the next term thereof, and not depart such court without leave.

SEC. 2200. Such recognizance may be taken by the court or judge making the order of removal, or by any officer authorized by law to let to bail after indictment found; and when taken out of the court in which the cause is

(ttt) Under the present constitution the venue in a criminal case can, for no cause, be changed to a county out of the judicial circuit in which the indictment is found. *State v. Flynn*, 31—35.

(uuu) When the question of insanity is submitted to a jury on writ of error *coram nobis*, after conviction and sentence, the prisoner is entitled to a change of venue upon such issue, but the change of venue carries with it the whole case. *Adler v. State*, 35—517.

(vvv) The prosecuting attorney may introduce counter affidavits to show that the person making affidavit in support of the application is not a credible person. *Curtis v. State*, 36—286.

As to change of venue after motion for new trial and order of continuance, see *Coll v. Elliott, judge*, 28—294.

(www) See *Dixon v. State*, 29—165.

pending, the same shall be filed with the clerk thereof as a part of the record in such cause.

SEC. 2201. No order for the removal of a cause shall be effectual in the case of any defendant not in confinement or custody, unless a recognizance be entered into as herein directed, nor unless the order of such removal be delivered before any juror is sworn in the cause.

SEC. 2202. If the defendant be in actual custody, the court or judge granting the order of removal shall also make an order commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed, and there deliver him to the keeper of such jail, together with the warrant or process by virtue of which he is imprisoned and held.

SEC. 2203. The sheriff shall obey such order without unnecessary delay, and shall indorse on the commitment, process or order of the court by which the prisoner is held in his custody the reason of the change of custody, and shall deliver such warrant, with the prisoner, to the keeper of the jail of the proper county, who shall give such sheriff a receipt therefor, and take charge of and keep the prisoner in the same manner as if he had been originally committed to such jail.

SEC. 2204. Whenever any order shall be made for the removal of any cause under the foregoing provisions of this act, the clerk of the court in which the same is pending shall make out a full transcript of the records and proceedings in the cause, including the order of removal, the petition therefor, if any, and the recognizance of the defendant, and of all witnesses, and shall immediately transmit the same, duly certified, under the seal of the court, to the clerk of the court to which the removal of the cause is ordered (xxx).

SEC. 2205. If such transcript shall not have been transmitted, or shall not have been received, on or before the first term of the court to which the cause is ordered to be removed, or if such transcript shall be lost or destroyed, the cause shall not, by reason thereof, abate or be discontinued; but such transcript, or another in lieu thereof, may be transmitted and filed, as required by this act, at or before the next succeeding term of such court, and proceeding shall be thereon had as if no such failure or loss had happened.

SEC. 2206. On the receipt of such transcript by the clerk of the court to which any such cause is removed, he shall file the same as a record of his court, and the same proceedings shall be had in the cause in such court, and in the same manner in all respects as if the same had originated there (yyy).

SEC. 2207. The defendant and all witnesses and others who shall have entered into recognizance to attend the trial of any such cause, having notice of the removal thereof, shall be bound to attend at the time and place of trial in the county to which the cause is so removed; and a failure so to do shall be deemed a breach of the recognizance, and, upon motion of the prosecuting

(xxx) The original indictment remains in the court where it is preferred. *Pleasant v. State*, 15—624.

The transcript should be duly certified by the clerk under the seal of his court, and the omission of the seal can not be corrected by the clerk's attaching his official seal to the certificate, by leave of the court, after trial and judgment. *Hudley v. State*, 36—237.

(yyy) Until the transcript is lodged in the court to which the venue is changed, such court has no jurisdiction to try the cause. *Burris v. State*, 38—221. On a change of venue after verdict against the prisoner, and while a motion in arrest of judgment is pending, the transcript may be perfected by *certiorari*. *Green v. State*, 19—178; *Binns v. State*, 35—118.

attorney, judgment of forfeiture shall be entered by the court as provided by law.

SEC. 2208. When the order of removal is made in term time, it shall be deemed a notice to every person who has entered into recognizance to appear at such term, and in all other cases the notice shall be given in writing, signed by the attorney for the state or the clerk of the court, and be served on the person so recognized in the manner provided by law for serving other notices.

SEC. 2209. The costs and expenses necessarily incurred in the removal of any cause under the foregoing provisions shall be adjusted and allowed by the court where the cause is tried, and shall be taxed and collected as other costs in the cause.

SEC. 2210. If any clerk of the circuit court shall neglect or refuse to perform any duty in relation to the removal of a cause enjoined on him by the provisions of this act, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered by civil action, in the name of the state.

SEC. 2211. When there are several defendants in any indictment or criminal prosecution, and the cause of the removal thereof exists only as to one or more of them, the other defendants shall be tried and all proceedings had against them in the county in which the case is pending, in all respects as if no order of removal had been made as to any defendant. *Crim. Code, secs. 414-431, as amended 1873.*

SEC. 2212. But one change of venue shall be granted in any criminal case or prosecution. *Ib., sec. 432.*

XVI.—TRIAL AND VERDICT.

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PRESENCE OF DEFENDANT.

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PRESENCE OF DEFENDANT.

SECTION 2213. If the indictment be for a felony, the defendant must be present during the trial (zzz). If he escapes from custody after the trial has commenced, or, if on bail, shall absent himself during the trial, the trial may either be stopped or progress to a verdict, at the discretion of the prosecuting attorney, but judgment shall not be rendered until the presence of the defendant is obtained.

SEC. 2214. If the indictment is for a misdemeanor, the trial may be had in the absence of the defendant (aaaa).

SEC. 2215. During the trial of an indictment for felony, where the defendant is on bail, he may remain on bail or be committed to and remain in the custody of the proper officer, as the court may direct.

SEPARATE TRIAL.

SEC. 2216. When two or more defendants are jointly indicted for a misdemeanor, they may be tried jointly or separately, in the discretion of the court.

SEC. 2217. When jointly indicted for a felony, any defendant requiring it is entitled to a separate trial, and when the trials are severed, the defendants may elect the order in which they shall stand upon the docket for trial; but if no such election is made, they shall stand in the order in which their names appear upon the indictment. *Crim. Code, secs. 184, 185, 228, 236.*

(zzz) The defendant must be personally present at each and every time when any step is taken by the court in his case, and the record, on appeal, must affirmatively show the fact. *Brown v. State*, 24—620, and cases cited.

(aaaa) The court has the discretion to refuse a trial in the defendant's absence. *Bridges v. State*, 38—510. The state can not demand a trial in the absence of the defendant. *Owen v. State*, 38—512. The court should not permit a defendant to be tried in his absence, even with his consent, where the punishment may be imprisonment; but if it does so, and there is a verdict for imprisonment as part of his punishment, he can not, after consenting, complain of it. *Martin v. State*, 40—364. An attorney's consent to try his client for a misdemeanor in his absence will be presumed to be by authority of the client in the absence of proof to the contrary. *Id.*

SEC. 2218. When two or more defendants are jointly indicted for any criminal offense, the attorney for the state may sever the trial of such joint defendants when he may deem it proper. *Rev. Stat., chap. 45, sec. 167.*

FORMATION OF THE JURY.

SEC. 2219. The jurors for the trial of criminal prosecutions shall be selected and summoned as provided by law (bbbb), and shall be composed of twelve jurors. *Provided*, that cases other than felony may, by agreement of the parties, be tried by a jury of less than twelve jurors.

SEC. 2220. The jury for the trial of all prosecutions for misdemeanors shall be selected in the manner provided by law for the formation of a jury in a civil action (cccc).

SEC. 2221. In a prosecution for felony, the clerk, under the direction of the court, shall draw from the jury-box (dddd) the names of twelve petit jurors, who shall be sworn to make true and perfect answers to such questions as may be asked them touching their qualifications as jurors in the case on trial, and each juror may be examined by the state and cross-examined by the defendant touching his qualification. If the court decide he is competent, the state may challenge him peremptorily or accept him; then the defendant may peremptorily challenge or accept him (eeee). If not so challenged by either party, he shall stand as a juror in the case, and each of the twelve jurors shall be examined and disposed of in like manner. If any of said jurors are disqualified or challenged, the clerk shall draw from the box as many more as may be required, and as often as may be required, until the jury shall be obtained, or the whole panel exhausted (ffff).

SEC. 2222. When the panel is exhausted, the court shall order the sheriff to summon bystanders to at least twice the number necessary to complete the jury, whose names shall be placed in the box and drawn, and such jurors shall be sworn, examined and disposed of in the same manner as is provided for drawing, examining and disposing of the regular panel. If the jury is still incomplete, the bystanders shall again be summoned to twice the number necessary to complete the jury, who shall, in like manner, be drawn, sworn and disposed of, and the mode herein provided shall be continued until the jury is completed (gggg).

SEC. 2223. By consent of the parties, the drawing of the jury may be waived, in which case the whole panel may be sworn, examined and disposed of as provided in the preceding section.

SEC. 2224. The court may, for sufficient cause, designate some other officer or person than the sheriff to summon jurors, the officer or person designated being first duly sworn in open court to discharge the duty faithfully and impartially.

(bbbb) For mode of selecting and summoning jury, see SECS. 3984, 3987.

(cccc) For mode of selecting jury in civil action, see SECS. 4013-4015.

(dddd) The clerk is required to keep a box for that purpose. SEC. 4013.

(eeee) See SECS. 2212, 2243.

(ffff) As to correcting clerical error in name of juror on the record, see *Hurley v. State*, 29-17.

(gggg) The erroneous rejection of a talesman is not a ground for a new trial; it is in the discretion of the court to excuse a talesman for any ground deemed sufficient, without prejudice to the accused. *Hurley v. State*, 29-17.

SEC. 2225. Where the judge of the circuit court is satisfied, after having made a fair effort, in good faith, for that purpose, that from any cause it will be impracticable to obtain a jury free of bias in the county wherein the prosecution is pending, he shall be authorized to order the sheriff to summon a sufficient number of qualified jurors from some adjoining county in which the judge shall believe there is the greatest probability of obtaining impartial jurors, and, from those so summoned, the jury may be formed (*).

SEC. 2226. The persons so summoned shall be allowed the same mileage as witnesses and the same pay as other jurors.

SEC. 2227. The sheriff shall have the same power of summoning jurors under such order that he would have in the county of which he is the sheriff, and the court the same power of coercing the attendance of such jurors that it would have if they were summoned in the same county. *Crim. Code, secs. 191-198.*

CHALLENGES (hhhh).

SEC. 2228. A challenge is an objection to the trial jurors, and is of two kinds:

First. To the panel.

Second. To the individual juror.

SEC. 2229. A challenge to the panel shall only be for substantial irregularity in selecting or summoning the jury, or in drawing the panel by the clerk.

SEC. 2230. Where the challenge is sustained on the ground of irregularity in selecting or summoning the jury, all the standing jurors shall be excluded from the trial jury, and it shall be composed of persons summoned by the sheriff, or other officer appointed by the court for that purpose. If sustained because of irregularity in drawing the panel, all the names of the standing jury shall be replaced and another panel drawn.

SEC. 2231. The challenge to the individual juror is:

First. For cause.

Second. Peremptory.

SEC. 2232. It must be taken before he is sworn in chief; but the court, for a good cause, may permit it to be made at any time before the jury is completed.

SEC. 2233. The challenge for cause may be taken either by the state or by the defendant.

SEC. 2234. It may be general, that the juror is disqualified in serving in any case, or particular, that he is disqualified from serving in the case on trial.

SEC. 2235. Causes of general challenge are:

First. A want of the qualifications prescribed by law.

Second. A conviction for a felony.

Third. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as render him incapable of properly performing the duties of a juror.

SEC. 2236. Particular causes of challenge are actual and implied bias.

(*) If this section can stand, as consistent with art. II, sec. 10, of the present constitution, it seems clear that it must be understood to be applicable only to cases in which the defendant may expressly waive his right to a trial by a jury "of the county in which the crime shall have been committed."

(hhhh) For challenges and oath of jury in civil cases, see *chap. 90.*

SEC. 2237. Actual bias is the existence of such a state of mind on the part of the juror in regard to the case, or to either party, as satisfies the court, in the exercise of a sound discretion, that he can not try the case impartially and without prejudice to the substantial rights of the party challenging (iii).

SEC. 2238. A challenge for implied bias may be taken:

First. Where the juror is related by consanguinity or affinity, or stands in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, employer and employed on wages, or is a member of the family of defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted.

Second. Being adverse to the defendant in a civil suit, or having complained against or being accused by him in a criminal prosecution.

Third. Having served on the grand jury which found the indictment, or on the coroner's jury which inquired into the death of the party whose death is the subject of the indictment.

Fourth. Having served on a trial jury which has tried another person for the offense charged in the indictment.

Fifth. Having been one of the former jury sworn to try the same indictment, and whose verdict was set aside, or who were discharged without a verdict.

Sixth. Having served as a juror in a civil action brought against the defendant for the act charged in the indictment.

Seventh. When the offense is punishable with death, the entertaining of such conscientious opinions as would preclude him from finding the defendant guilty.

SEC. 2239. The state shall be entitled to ten peremptory challenges in prosecutions for felony, and to three in prosecutions for misdemeanor.

SEC. 2240. The defendant is entitled to twenty peremptory challenges in prosecutions for felony, and to three in prosecutions for misdemeanor.

SEC. 2241. An exemption from serving on a jury is not a cause of challenge; and having formed or expressed an opinion from rumor merely shall not be a cause of challenge.

SEC. 2242. The challenge to the juror shall first be made by the state, and then by the defendant; and the state must exhaust her challenges to each particular juror before such juror is passed to the defendant for challenge or acceptance.

SEC. 2243. The challenges of either party need not be all taken together, but separately, in the following order:

First. To the panel.

Second. To the individual juror for general disqualification.

Third. To the individual juror for implied bias.

Fourth. To the individual juror for actual bias.

Fifth. Peremptory.

SEC. 2244. Challenges shall be tried and determined by the court in a summary manner, without the issues of law or of fact arising thereon being reduced to writing.

SEC. 2245. The juror himself may be examined on oath by either party upon challenge.

(iii) See *Casey v. State*, 37—67; *Dolan v. State*, 40—454; *Casal v. State*, *Ib.*, 511; *Benton v. State*, 30—328, and cases cited.

SEC. 2246. Other witnesses may also be examined, and their attendance coerced.

SEC. 2247. When several defendants are tried together, the challenge of any one of the defendants shall be the challenge of all.

OATH OF JURY—PROCEDURE OF TRIAL.

SEC. 2248. When a jury of twelve qualified jurors shall have been duly impaneled, they shall be sworn substantially as follows:

"You, and each of you, do solemnly swear that you will well and truly try the case of the State of Arkansas against A. B., and a true verdict render, unless discharged by the court or withdrawn by the parties" (jjjj).

SEC. 2249. The prosecuting attorney may then read to the jury the indictment, and state the defendant's plea thereto, and the punishment prescribed by law for the offense, and may make a brief statement of the evidence on which the state relies.

SEC. 2250. The defendant, or his counsel, may then make a brief statement of the defense and the evidence upon which the defendant relies.

SEC. 2251. The state must then offer the evidence in support of the indictment.

SEC. 2252. The defendant, or his counsel, must then offer his evidence in support of his defense.

SEC. 2253. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

SEC. 2254. When, in the opinion of the court, it is necessary that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by the judge or a person appointed by the court for that purpose (kkkk).

SEC. 2255. Such officers must be sworn to suffer no person to speak or communicate with the jury on any subject connected with the trial, nor do so themselves, except the mere showing of the place to be viewed, and return them into court without unnecessary delay, or at some specified time.

SEC. 2256. All questions of law arising during the trial shall be decided by the court, and the jury shall be bound to take the decisions of the court on points of law as the law of the case (llll).

(jjjj) Where the record fails to show that the trial jury, in a felony case, were sworn in that case, a judgment of conviction will be reversed. *Barbour v. State*, 37—61; *Lawrence v. State*, 25—106. Where the record shows that the jurors were sworn, but the form of oath administered is not set out in the entries, it will be presumed by the supreme court, in the absence of any showing to the contrary, that the oath was administered to the jurors in proper form. *Hurley v. State*, 29—17; *Anderson v. State*, 34—257, and cases cited; *Lay v. State*, 42—105. But if the form of oath administered is entered of record, and appears not to be in substance and legal effect the oath prescribed by law, it will be error. *Anderson v. State*, *supra*. When the regular panel is exhausted, and the deficiency of jurors is supplied by talesmen, they may be sworn separately as they are selected. *Hurley v. State*, *supra*. As to form of oath given in this section, see *Palmore v. State*, 29—248.

(kkkk) When a view of the locality where the crime is alleged to have been committed is ordered by the court, the defendant must be permitted to accompany the jury. *Benton v. State*, 30—328.

(llll) See *Pleasant v. State*, 13—360; *Edwards v. State*, 22—253; *Robinson v. State*, 33—180; *Sweeney v. State*, 35—585.

SEC. 2257. When the evidence is concluded, the court shall, on motion of either party, instruct the jury on the law applicable to the case (mmmm).

SEC. 2258. In all cases where, by law, two witnesses, or one witness with corroborating circumstances, are requisite to warrant a conviction, if the requisition is not fulfilled, the court shall instruct the jury to render a verdict of acquittal, by which instruction they are bound. *Crim. Code, secs. 199-225, 234, 235, 241.*

SEC. 2259. A conviction can not be had in any case of felony upon the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows that the offense was committed, and the circumstances thereof. *Provided*, that in misdemeanor cases a conviction may be had upon the testimony of an accomplice (nnnn). *Crim. Code, sec. 240, as amended by act Jan. 25, 1883.*

SEC. 2260. A confession of a defendant, unless made in open court, will not warrant a conviction unless accompanied with other proof that such offense was committed.

SEC. 2261. Where there is a reasonable doubt of the degree of the offense which the defendant has committed, he shall only be convicted of the lower degree (oooo).

SEC. 2262. Where there is a reasonable doubt of the defendant's guilt upon the testimony in the whole case, he is entitled to an acquittal (pppp). *Crim. Code, secs. 237-239.*

SEC. 2263. If the case be not submitted without argument, the party having the burden of proof shall have the opening and conclusion of the argument, and if, upon the demand of the adverse party, the attorney prosecuting for the state, or the attorney for the defense, shall refuse to open and fully state the grounds on which he claims a verdict, the party so refusing shall be refused the conclusion of the argument. *Crim. Code, sec. 226, as amended by act March 6, 1877.*

SEC. 2264. If more than one counsel on each side argue the case, they shall do so alternately.

SEC. 2265. The jurors, before the case is submitted to them, may, in the discretion of the court, be permitted to separate (qqqq), or be kept together in the charge of proper officers. The officers must be sworn to keep the jury together during the adjournment of the court, and to suffer no person to speak to or communicate with them on any subject connected with the trial, nor do so themselves.

(mmmm) Judges shall not charge juries with regard to matters of fact, but shall declare the law; and in jury trials shall reduce their charge or instructions to writing on the request of either party. *Art. VII, sec. 23, Const.* The reading of a section of the digest to the jury as an instruction is a sufficient compliance with the law when it is required to be in writing. *Palmore v. State, 29-248.* See also note (11) to sec. 23, art. VII, *Const.*; *Fitzpatrick v. State, 37-238*; *Polk v. State, 36-117*; *Wallace v. State, 28-531*; *Rose's Digest, p. 427, title, "Instructions to Jury."*

(nnnn) See *Polk v. State, 36-117*; *Casey v. State, 37-67*; *Polk v. State, 40-482.*

(oooo) See *Green v. State, 38-304*; *Harris v. State, 36-127.*

(pppp) The rule applies to misdemeanors as well as to felonies. *State v. King, 20-166.*

The rule that the guilt of the accused must be established to the exclusion of every other hypothesis only applies in cases depending upon circumstantial evidence. *Cohen v. State, 32-226.* See also *Benton v. State, 30-328.*

(qqqq) It is within the sound discretion of the court to permit the jury to separate, either before or after the cause is submitted to them; but such discretion should be exercised, especially in trials for felony, with the utmost caution. *Johnson v. State, 32-309.*

SEC. 2266. The jury, whether permitted to separate or kept in charge of officers, must be admonished by the court that it is their duty not to permit any one to speak to or communicate with them on any subject connected with the trial, and that all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express any opinion thereon until the cause is finally submitted to them. This admonition must be given or referred to by the court at each adjournment.

SEC. 2267. A suitable room must be provided for the use of the jury on their retirement for deliberation, with suitable furniture, fuel, lights and stationery.

SEC. 2268. After the cause is submitted to the jury, they must be kept together in the charge of the sheriff, in the room provided for them, except during their meals and periods for sleep, unless they be permitted to separate by order of the court (rrrr). Suitable food and lodging must be provided by the sheriff, and the expense paid by the county.

SEC. 2269. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause (ssss).

SEC. 2270. After the jury retires for deliberation, if there is a disagreement between them as to any part of the evidence, or if they desire to be informed on a point of law, they must require the officer to conduct them into court. Upon their being brought into court the information required must be given in the presence of, or after notice to, the counsel of the parties.

SEC. 2271. If, after retirement, one of the jurors become so sick as to prevent the continuance of his duty, or other accident or cause occur preventing the jury from being kept together (tttt), or, after being kept together such a length of time as the court deems proper, they do not agree in a verdict, and it satisfactorily appears that there is no probability they can agree, the court may discharge them.

SEC. 2272. In all cases where a jury is discharged, either in the progress of a trial or after the cause is submitted to them, the cause may again be tried at the same or another term of the court.

SEC. 2273. While the jury are absent the court may adjourn from time to time as to other business; but it shall be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

SEC. 2274. A final adjournment of the court discharges a jury.

SEC. 2275. Where two or more persons are included in the same indictment, and the court is of opinion that the evidence in regard to a particular individual is not sufficient to put him on his defense, it must, on motion of either party desiring to use such defendant as a witness, order him to be discharged from the indictment, and permit him to be examined by the party so moving. The order is an acquittal of such defendant and a bar to another prosecution for the same offense.

(rrrr) See *note* (qqqq) *ante*.

(ssss) It is in the discretion of the court to determine whether the jury shall take the instructions with them when they retire. *Benton v. State*, 30—328; *Hurley v. State*, 29—17.

The jury should not be permitted to take with them papers containing statements bearing on the case which were not read in evidence. *Palmore v. State*, 29—248.

(tttt) For causes for which the court may discharge the jury after the case is submitted to them, see *Lee v. State*, 26—260.

SEC. 2276. If, during the trial, it shall appear that the offense was committed out of the jurisdiction of the court, but within the jurisdiction of some other court of this state, the court shall stop the trial, discharge the jury, and take the proceedings in the case as directed in sections 2165 and 2166.

SEC. 2277. If it appears the offense was committed out of the state, the trial shall in like manner be stopped, and the defendant either discharged or ordered to be retained in custody for a reasonable time, until the counsel for the state shall have an opportunity to inform the chief executive officer of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender.

SEC. 2278. If, during the trial, the court shall be of opinion that the facts proved constitute an offense of a higher nature than that charged in the indictment, it may direct the jury to be discharged and all proceedings to be suspended until the case can be resubmitted to the grand jury, and may order the defendant to be committed, or admit him to bail to answer any new indictment which may be found against him for the higher offense. If an indictment is not found for the higher offense before the next grand jury is discharged, the court must proceed to try the defendant on the original indictment.

SEC. 2279. If, during the trial, the court is of opinion that the facts charged in the indictment do not constitute an offense punishable by law, it shall order the jury to be discharged and the indictment to be quashed, and thereupon take the proceedings directed in section 2169.

SEC. 2280. The prosecuting attorney, with the permission of the court, may, at any time before the case is finally submitted to the jury, dismiss the indictment as to all or a part of the defendants, and such dismissal shall not bar a future prosecution for the same offense.

VERDICT.

SEC. 2281. Where the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge, their names called by the clerk, and, if they all appear, their foreman must declare their verdict (uuuu).

SEC. 2282. The jury may render either a general or a special verdict.

SEC. 2283. A general verdict is either "guilty" or "not guilty;" if guilty, the jury affixing the punishment, if the amount thereof is not determined by law (vvvv). *Crim. Code, secs. 227, 229-233, 242-255.*

SEC. 2284. The jury shall, in all cases of murder, on conviction of the accused, find by their verdict whether he be guilty of murder in the first or

(uuuu) The verdict need not be in writing, but may be announced orally by the foreman of the jury and entered by the clerk upon the record, and if in writing and responsive to the issue, it is sufficient, without the formula "In manner and form as charged in the indictment." *Dixon v. State*, 29-165, and cases cited. It is not necessary that the verdict should be written upon the indictment, though it is usual to do so. *Atkins v. State*, 16-569. The verdict is of no validity until delivered by the jury in court; and the clerk can not receive it in the recess of the court without the direction of the court or consent of parties. *State v. Mills*, 19-476. As to calling jury back immediately after their discharge to amend their verdict, see *Levick's v. State*, 32-585.

(vvvv) Where the jury find a verdict of guilty, and fail to agree on or assess the punishment, the court may assess and declare it. SEC. 2308. A verdict of guilty on an indictment containing several counts is good, if either of the counts be good and be sustained by evidence. *Cooper (I. Z.) v. State*, 37-412; *Howard v. State*, 34-433; *Watkins v. State*, 37-370; *Brown v. State*, 10-607. See also *Youngblood v. State*, 35-35. Where several are jointly indicted and tried together, the verdict and judgment against them should be several; that is, fix the fine or punishment to be paid or suffered by each. *Straughan v. State*, 16-37.

second degree (www); but if the accused confess his guilt, the court shall impanel a jury and examine testimony, and the degree of crime shall be found by such jury. *Act Dec. 17, 1838, sec. 1.*

SEC. 2285. A special verdict is the finding of the facts only, leaving the law arising on the facts to the judgment of the court, with an ascertainment of the punishment in the event that the court pronounces a judgment of conviction on the verdict.

SEC. 2286. A special verdict must present the conclusions of fact as established by the evidence, and not the evidence of those facts; and the facts must be so presented that the court has nothing to do but draw the conclusions of law upon them.

SEC. 2287. The special verdict must be reduced to writing by the jury, and read to them in the presence of the court. It shall not be received by the court unless it pronounces affirmatively on the facts necessary to enable the court to give judgment.

SEC. 2288. Upon an indictment for an offense consisting of different degrees, the defendant may be found guilty of any degree not higher than that charged in the indictment, and may be found guilty of any offense included in that charged in the indictment (xxxx).

SEC. 2289. The offenses named in each of the subdivisions of this section shall be deemed degrees of the same offense in the meaning of the preceding section:

First. All offenses of homicide.

Second. All injuries to the person by maiming, wounding, beating and assaulting, whether malicious or from sudden passion, and whether attended or not with the intention to kill.

Third. All offenses of larceny.

Fourth. Arson and house-burning.

Fifth. Burglary and house-breaking.

Sixth. An offense, and an attempt to commit the offense. Offenses punished capitally are of the highest degree; other felonies are of higher degree than misdemeanor; and those punished by imprisonment of higher degree than those punished by fine alone. Where the punishment is the same in kind, the amount that may be inflicted fixes the degree.

SEC. 2290. Where an offense is charged in an indictment to have been committed with particular circumstances as to time, place, person, property, value, motive or intention, the offense, without the circumstances, or with part only, is included in the offense, although that charge may be a felony, and the offense, without the circumstances, a misdemeanor only.

SEC. 2291. When the proof shows the defendant to be guilty of a higher

(www) See *Ford v. State*, 34—649, and cases cited. A verdict which does not find the degree of murder is so fatally defective that no judgment can be entered upon it. *Thompson v. State*, 26—333; *Trammell v. State*, *Ib.*, 534; *Allen v. State*, *Ib.*, 333; *Neville v. State*, *Ib.*, 614, and cases cited. But if the judgment is arrested for this cause, on motion of the defendant, he may be tried again on the same indictment. *Allen v. State*, *supra*. Where there are two counts substantially the same, a general verdict of murder in the first degree is a finding upon both counts, and is sufficient. *Lovells v. State*, 32—385.

(xxxx) Upon an indictment for a felony, the accused may be convicted of a misdemeanor, where both offenses belong to the same generic class, where the commission of the higher may involve the commission of the lower offense, and where the indictment for the higher offense contains all the necessary substantive allegations to let in proof of the misdemeanor. *Cameron v. State*, 13—712; *Childs v. State*, 15—204; *Sveeden v. State*, 19—205; *Gurst v. State*, *Ib.*, 405; *State v. Cryer*, 20—64; *Bryant v. State*, 41—359. See also *State v. Nichols*, 38—550; *Brown v. State*, 31—232; *McPherson v. State*, 29—225; *Curtis v. State*, 26—439.

degree of the offense than is charged in the indictment, the jury shall find him guilty of the degree charged in the indictment.

SEC. 2292. Upon an indictment against several, if the jury can not agree as to all, they may render a verdict as to those concerning whom they do agree, and the case as to the others may be tried by another jury.

SEC. 2293. If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict.

SEC. 2294. Upon a verdict being rendered, the jury may be polled at the instance of either party, which consists of the clerk or judge asking each juror if it is his verdict, and if one answers in the negative the verdict can not be received (yyyy). *Crim. Code, secs. 256-265.*

XVII.—NEW TRIAL AND ARREST OF JUDGMENT.

SECTION

2295. New trial defined.
2296. application for, when to be made.
2297. in what cases granted.
2298. juror can not be examined to establish grounds for, except.
2299. effect of.

SECTION

ARREST OF JUDGMENT.

2300. Arrest of judgment defined.
2301. motion for, when may be made.
2302. ground for, court may arrest.
2303. proceedings if court deems defendant guilty.

SECTION 2295. A new trial is the re-examination of an issue of fact in the same court by another jury after a verdict has been given (zzzz).

SEC. 2296. The application for a new trial must be made at the same term at which the verdict is rendered, unless the judgment is postponed to another term, in which case it may be made at any time before judgment.

SEC. 2297. The court in which a trial is had upon an issue of fact may grant a new trial, when a verdict is rendered against the defendant by which his substantial rights have been prejudiced, upon his motion, in the following cases:

First. Where the trial in a case of felony was commenced and completed in his absence.

Second. Where the jury has received any evidence out of court other than that resulting from a view as provided by law.

Third. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors.

Fourth. Where the court has misinstructed or refused properly to instruct the jury.

Fifth. Where the verdict is against law or evidence.

Sixth. Where the defendant has discovered important evidence in his favor since the verdict (a5).

(yyyy) If there is any reason to doubt that all the jurors concur, it is competent for the court, of its own motion, to cause the jury to be polled. *Harris v. State*, 31—196.

(zzzz) When a defendant is acquitted of a misdemeanor punishable by fine only, the circuit court may set aside the verdict, upon motion of the state, and again put the defendant upon trial. *Taylor v. State*, 36—84.

(a5) See *Redman v. State*, 40—445, and cases cited; *Wallace v. State*, 28—531; *Anderson v. State*, 41—229; *Johnson v. State*, 29—62, and cases cited; *McPherson v. State*, *Id.*, 225; *Runnels v. State*, 28—121.

Seventh. Where, from the misconduct of the jury (b5), or from any other cause, the court is of opinion that the defendant has not received a fair and impartial trial.

SEC. 2298. A juror can not be examined to establish a ground for a new trial, except it be to establish, as a ground for a new trial, that the verdict was made by lot (c5).

SEC. 2299. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict can not be used or referred to in evidence or in argument (d5).

ARREST OF JUDGMENT.

SEC. 2300. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered upon a verdict against him, or on a plea of guilty.

SEC. 2301. The motion may be made at any time before judgment, or after judgment, during the same term of the court.

SEC. 2302. The only ground upon which a judgment shall be arrested is, that the facts stated in the indictment do not constitute a public offense within the jurisdiction of the court; and the court may arrest the judgment without motion on observing such defect (e5).

SEC. 2303. If the court is of opinion, from the evidence on the trial, that the defendant is guilty of a public offense, he may be detained in custody or on bail, in the manner and for the time prescribed in sections 2158 and 2159; but otherwise he shall be discharged on the arrest of judgment. *Crim. Code, secs. 266-275.*

XVIII.—BILLS OF EXCEPTION.

SECTION

2304. Exceptions may be taken by either party.
2305. upon what decisions not allowed.

SECTION

2306. Exceptions, how taken and shown.

SECTION 2304. Upon the trial of criminal or penal prosecutions, either party may except to any decision of the court by which the substantial rights of such party are prejudiced, subject to the restrictions in the next section.

SEC. 2305. The decisions of the court upon challenges to the panel, and for cause, shall not be subject to exception (f5).

(b5) As to when a new trial should be granted for misconduct of the jury, see *Dolan v. State*, 40—454, and cases cited; *Palmore v. State*, 29—248; *Kee v. State*, 28—155; *McKensie v. State*, 26—334; *Portis v. State*, 27—360.

(c5) See *Wilder v. State*, 29—293.

(d5) For the proper construction of this section where the indictment charges several offenses or grades of offense, see *Johnson v. State*, 29—31.

(e5) To proceed to trial without a plea from the defendant is error, for which judgment should be arrested. *Lacelfield v. State*, 34—275.

The provisions of this section require that every material fact necessary to constitute an offense be alleged in the indictment. *Barton v. State*, 29—68; see also *Younger v. State*, 37—116.

(f5) The provision of this section which applied to motions to set aside an indictment is omitted as unconstitutional. See *Palmore v. State*, 29—248; *art. II, sec. 8, Const.* It seems to be questionable whether the rest of the section is not also in conflict with the constitution. See *Benton v. State*, 30—328; *Wallace v. State*, 28—547.

SEC. 2306. The exception shall be shown upon the record by a bill of exceptions, prepared, settled and signed as in civil cases (*). *Crim. Code, secs. 276-278.*

XIX.—JUDGMENT.

SECTION	SECTION
2307. Judgment, may be rendered, when.	2320. Judgment, when for imprisonment in penitentiary, duty of court.
2308. court may declare and fix punishment, when.	2321. for costs to be rendered against defendant.
2309. where verdict of jury exceeds limits of law.	ACTS PROHIBITED AND NOT OTHERWISE PUNISHED SHALL BE DEEMED MISDEMEANORS.
2310. where verdict of jury is below limit.	2322, 2323. Judgment, where punishment is not defined by statute.
2311. where court deems punishment assessed by jury excessive.	JUDGMENT OF REMOVAL FROM OFFICE, WHEN.
2312. in felony, defendant must be present.	2324. Judgment, for what, excludes from office.
2313. proceedings before pronouncing.	2325. when to be for removal from office.
2314. what cause defendant may show against.	SECURITY TO KEEP THE PEACE MAY BE REQUIRED IN ADDITION TO SENTENCE.
2315. not to be pronounced if defendant insane; proceedings.	2326, 2327. Security to keep the peace may be an additional requirement in, when; proceedings.
2316. of death, day to be fixed.	
2317. where defendant convicted of two or more offenses.	
2318. for fine, imprisonment for, limit.	
2319. proceedings upon pronouncing.	

SECTION 2307. Upon verdicts in cases of misdemeanor, and verdicts of acquittal in cases of felony, and upon trials by the court, and upon a plea of guilty, the court may immediately render judgment; but, upon verdicts of conviction in cases of felony, the court shall not pronounce judgment until two days after the verdict is rendered, unless the court is about to adjourn for the term, and then in not less than six hours after the verdict, except by the defendant's consent. *Crim. Code, sec. 279.*

SEC. 2308. When a jury find a verdict of guilty and fail to agree on the punishment to be inflicted, or do not declare such punishment in their verdict, or if they assess a punishment not authorized by law, and in all cases of judgment on confession, the court shall assess and declare the punishment and render judgment accordingly (g5).

SEC. 2309. If the jury in any case assess a greater punishment, whether of fine or imprisonment, than the highest limit declared by law for the offense for which they convict the defendant, the court shall disregard the excess and enter judgment and pronounce sentence according to the highest limit prescribed by law in the particular case.

SEC. 2310. If the jury in any case assess a punishment, whether of fine or imprisonment, below the limit prescribed by law for the offense of which the defendant is convicted, the court shall render judgment and pronounce sentence according to the lowest limit prescribed by law in such cases.

SEC. 2311. The court shall have power, in all cases of conviction, to reduce

(*) See *Nick Walker v. State*, 39—221; *Dolan v. State*, 40—454.

In the absence of a bill of exceptions, it will be presumed in the supreme court that the verdict was sustained by the evidence. *Wigley v. State*, 41—225.

(g5) But see SEC. 2324, as to judgment in case of plea of guilty to indictment for murder.

the extent or duration of the punishment assessed by a jury, if, in the opinion of the court, the conviction is proper, and the punishment assessed is greater than, under the circumstances of the case, ought to be inflicted, so that the punishment be not, in any case, reduced below the limit prescribed by law in such cases. *Rev. Stat., chap. 45, secs. 176-179.*

SEC. 2312. Judgment shall not be rendered against a defendant, in case of felony, except in his presence. If he is in custody, he shall be brought into court by the proper officer, and, if not in custody, a bench warrant shall be issued for his arrest similar to the bench warrant on indictments.

SEC. 2313. When the defendant appears for judgment, he must be informed by the court of the nature of the indictment, his plea and verdict thereon, if any, and he must be asked if he has any legal cause to show why judgment should not be pronounced against him.

SEC. 2314. He may show for cause against the judgment any sufficient ground for a new trial, or for arrest of judgment.

SEC. 2315. He may also show that he is insane. If the court is of opinion that there is reasonable ground for believing he is insane, the question of his insanity shall be determined by a jury of twelve qualified jurors, to be summoned and impaneled as directed by the court (h5). If the jury do not find him insane, judgment shall be pronounced. If they find him insane, he must be kept in confinement, either in the county jail or lunatic asylum, until, in the opinion of the court, he becomes sane, when judgment shall be pronounced.

SEC. 2316. Where judgment of death is pronounced, the day of the execution thereof shall be fixed in the judgment, and shall not be in less than thirty days after the judgment.

SEC. 2317. If the defendant is convicted of two or more offenses, the punishment of each of which is confinement, the judgment shall be so rendered that the punishment in one case shall commence after the termination of it in the others. *Crim. Code, secs. 280-283, 285.*

SEC. 2318. If the punishment of an offense be a fine, the judgment shall direct that the defendant be imprisoned until the fine and costs are paid, specifying, however, the extent of imprisonment (i5), which shall not exceed one day for each seventy-five cents of the fine and costs (*). *Ib., sec. 284, as amended by act March 24, 1875.*

SEC. 2319. The law in relation to the punishment, pains and penalties of all persons when convicted, so far as relates to them, and the sentence, shall be read to each convict and the consequences fully declared to him, so that such person so convicted and sentenced shall in no instance be deemed ignorant of the sentence pronounced on him (j5). *Rev. Stat., chap. 44, art. 7, sec. 8.*

(h5) The question of the defendant's insanity may be submitted to a jury on writ of error *coram nobis*, after judgment and sentence of death. *Adler v. State*, 35—317.

(i5) The word "imprisonment," as here used, means imprisonment in the county jail, and applies only to misdemeanors. *Cheaney v. State*, 36—74.

(*) But see chap. 39. It may be questioned whether the statutes found there have not by implication repealed this section, SEC. 2356 and part of SEC. 2350.

(j5) Where the record is silent, the supreme court will presume on appeal that the court below, in passing sentence upon a person convicted of crime, complied with the provisions of this section, and a failure to do so would be no cause of reversal. It could only be a ground to order the convict back to the circuit court, to be there enlightened and then remanded to the penitentiary in pursuance of his sentence. *Brown v. State*, 13—96.

SEC. 2320. Whenever any person shall be sentenced to the penitentiary, it shall be the duty of the court before which he shall have been convicted to cause to be made and transmitted to the keeper of the penitentiary a short report of the circumstances attending the offense, particularly such as tend to aggravate or extenuate the same, which report the keeper shall file and preserve. *Act Dec. 17, 1838.*

SEC. 2321. In judgments against the defendant, a judgment for costs, in addition to the other punishment, shall be rendered, which shall be taxed by the clerk for the benefit of the officers rendering the services, and, in case of failure by the defendant to pay said costs, they shall be paid by the county where the conviction is had (k5). *Crim. Code, sec. 286, as amended 1871.*

ACTS PROHIBITED AND NOT OTHERWISE PUNISHED SHALL BE DEEMED MISDEMEANORS.

SEC. 2322. Where the performance of any act is prohibited, or the performance of any act is required by any statute, and no penalty for the violation of such statute is imposed, either in the same section containing such prohibition or requiring such act or duty, or in any other section or statute, the doing of such prohibited act, or the neglect of such required act or duty, shall be deemed a misdemeanor (l5).

SEC. 2323. Every person who shall be convicted of any misdemeanor, the punishment of which is not defined in this or some other statute, shall be punished by imprisonment not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by fine and imprisonment both (*). *Rev. Stat., chap. 44, div. 8, art. 1, secs. 11, 12.*

JUDGMENT OF REMOVAL FROM OFFICE, WHEN.

SEC. 2324. Every person convicted of bribery or felony shall be excluded from every office of trust or profit and from the right of suffrage in this state (m5). *Rev. Stat., chap. 44, div. 3, art. 11, sec. 8.*

SEC. 2325. Where justices of the peace, sheriffs, coroners, surveyors, jailers, county assessors, prosecuting attorneys, constables, city or police judges, clerks (n5) and marshals shall be convicted upon an indictment for malfeasance or misfeasance in office, or for willful neglect in the discharge of their official duties, or for any offense which, by the statute law or constitution, creates a forfeiture of their offices, the court shall render a judgment of removal from office, in addition to the other penalties and punishment prescribed by law. *Crim. Code, sec. 287.*

SECURITY TO KEEP THE PEACE MAY BE REQUIRED IN ADDITION TO SENTENCE.

SEC. 2326. The court before which any person may be convicted of any criminal offense not punishable with death shall have power, in addition to

(k5) But in cases of misdemeanor, when the defendant is convicted, the county is not liable for the costs. See SEC. 2342. *Bradley County v. Bond*, 37—226. The costs include the prosecuting attorney's fee. *Phillips County v. Clayton*, 29—246.

(l5) See SECS. 566, 567, 1961.

(*) See *Greenlee v. State*, 41—353.

(m5) See art. III, secs. 2, 6, *Const.*

(n5) See further, as to clerks, SECS. 560-563, and, as to county judges, SEC. 1746.

the sentence prescribed or authorized by law, to require such person to give security to keep the peace or be of good behavior, or both, for any term not exceeding three years from the time he may be discharged from prison, if imprisonment be a part of the punishment. If such person fail to give such security, he shall be committed to prison, there to remain until such security be given.

SEC. 2327. No such recognizance shall be deemed to be broken unless the principal therein be convicted of some offense amounting in judgment of law to a breach of the recognizance. *Rev. Stat., chap. 44, secs. 180, 181, 182.*

XX.—EXECUTION.

SECTION	SECTION
2328. Judgment of death, who may suspend.	2334. Judgment of confinement, execution of, by sheriff.
2329. how sheriff may suspend for insanity or pregnancy.	2335. sheriff to make written return of execution of.
2330. copy of warrants, sheriff to execute.	2336. imprisonment for fine in execution of; rule.
2331. when and how executed.	2337. certified copy of, authorizes its execution, except.
2332. governor to fix day of execution, when.	
2333. conveyance of defendant to penitentiary, under; powers of sheriff.	

SECTION 2328. The only officers who shall have the power of suspending the execution of a judgment of death are the governor, and, in cases of insanity or pregnancy of the defendant, the sheriff, as provided in the next section; and, in cases of appeals, the clerk of the supreme court, as prescribed by law.

SEC. 2329. When the sheriff is satisfied that there are reasonable grounds for believing that the defendant is insane or pregnant, he may summon a jury of twelve persons on the jury list drawn by the clerk, who shall be sworn by the sheriff well and truly to inquire into the insanity or pregnancy of the defendant and a true inquisition return; and they shall examine the defendant and hear any evidence that may be presented, and by a written inquisition, signed by each of them, find as to insanity or pregnancy. And, unless the inquisition find the defendant insane or pregnant, the sheriff shall not suspend the execution; but, if the inquisition find the defendant insane or pregnant, he shall suspend the execution and immediately transmit the inquisition to the governor.

SEC. 2330. Where a judgment of death or confinement either in the penitentiary or county jail is pronounced, a certified copy thereof must be furnished forthwith to the sheriff, who shall thereupon execute it, and no other warrant or authority is necessary to its execution.

SEC. 2331. The judgment of death must be executed by the sheriff on the day designated in the judgment, between sunrise and sunset, by hanging the defendant by the neck until he is dead.

SEC. 2332. Whenever a judgment of death has not been executed on the day appointed therefor by the court, from any cause whatever, the governor, by a warrant, under his hand and the seal of the state, shall fix the day of execution,

which warrant shall be obeyed by the sheriff, and no one but the governor can then suspend its execution.

SEC. 2333. In conveying the defendant to the penitentiary, the sheriff shall have all the powers of preventing an escape, of resisting an effort to rescue the defendant, and of recapturing him, and of summoning persons to his aid, that he would have in executing a warrant of arrest in his county.

SEC. 2334. The sheriff, in executing a judgment of confinement, shall deliver the defendant, with a certified copy of the judgment, to the keeper of the penitentiary, or to the jailer, according to the judgment.

SEC. 2335. The sheriff shall make a written return of the execution of the judgment of death or imprisonment, and file the same with the clerk of the court in ten days after such execution. *Crim. Code, secs. 288-295.*

SEC. 2336. The defendant shall not be held in confinement for a fine for a longer period than at the rate of one day for each seventy-five cents of the fine (o5), but such confinement shall not discharge the fine, which thereafter can only be collected by proceeding against the defendant's property. But the provisions of this section shall not apply to judgments in city or police courts, which may be discharged by confinement in the city work-house, according to the provisions of the special statutes regulating them (*).

SEC. 2337. A certified copy of the judgment, delivered to the sheriff, shall authorize and require him to execute a judgment for the abatement or removal of a nuisance, or for any other thing than the payment of money by the defendant; and he shall make a return of his executing it, and file the same with the clerk of the court in sixty days after the copy is delivered to him. *Ib., secs. 298, 299.*

XXI.—COSTS IN CRIMINAL PROCEEDINGS.

SECTION

- 2338. Costs on conviction in capital cases.
- 2339. where defendants sever on trial.
- 2340. defendant's property charged with, from what time.
- 2341. fines, etc., clerk to issue execution for.
- 2342. Fees, how paid.
- 2343. Costs, when to be paid by county.
- 2344. county not liable for, until.
- 2345. court to adjust, and certify to county court.
- 2346. in what cases state to pay.

SECTION

- 2317. Costs, judge to certify, and auditor to draw warrant, when.
- BOND FOR COSTS IN ALL PROSECUTIONS IN INFERIOR COURTS.
- 2348. Costs, bond for, to be given, when.
- 2349. form of bond for.
- 2350. judgment for, on bond, when; imprisonment thereon, when, limit.
- 2351. bond for, not required, when.
- 2352. no security for, required of officers, when.

SECTION 2338. The costs in all cases of conviction where the convict may be sentenced to suffer death, and all expenses attending the execution of such sentence, shall be adjusted and taxed by the court, and paid out of the estate of the convict, and execution may be issued against the estate of the convict therefor.

SEC. 2339. Where two or more defendants are joined in one indictment, and shall sever in the trial, the costs which shall have accrued before the sever-

(o5) See SECS. 2318, 2350.

(*) See note (*) to SEC. 2318.

ance shall be adjudged against such of the defendants as may have been convicted, and the costs thereafter accruing shall be apportioned and adjudged accordingly. *Rev. Stat., chap. 45, secs. 197, 198.*

SEC. 2340. The property, both real and personal, of any person charged with a criminal offense, shall be bound from the time of his arrest, or the finding of an indictment against him, whichever shall first happen, for the payment of all fines and costs which he may be adjudged to pay (p5). *Rev. Stat., chap. 45, sec. 202.*

SEC. 2341. The clerk of the court, at the end of each term, shall issue executions for all fines imposed on indictments, or in penal actions or otherwise, and the costs of conviction in criminal cases, during the term, and remaining unpaid, which shall be executed in the same manner as executions in civil cases, and the property of the defendant may be seized and sold, notwithstanding he may be in custody for the same demand; and in every case where a witness is summoned by a special subpoena, to testify in a particular case, in which an indictment may be found, it shall be the duty of the clerk to tax the attendance of such witness with the costs of the suit, to be collected from the defendant, in the event that judgment shall be rendered against him therefor, to be paid into the county treasury. *Rev. Stat., chap. 45, sec. 203; act Jan. 15, 1857, sec. 2, and Crim. Code, sec. 296.*

SEC. 2342. Fees allowed in criminal cases shall be paid by the defendant, but if sufficient property belonging to the defendant can not be found for that purpose, they shall be paid by the county where the conviction is had, except in cases of misdemeanor, when the county shall not be liable. *Act Feb. 25, 1875, sec. 5.*

SEC. 2343. In all criminal or penal cases, if the defendant shall be acquitted, except in cases where the prosecutor shall be adjudged to pay the costs, or, in cases of felony, if convicted, shall not have property to pay the costs, the same shall be paid by the county (q5). *Rev. Stat., chap. 45, sec. 205, and act Feb. 25, 1875, sec. 5.*

SEC. 2344. The county shall not be liable for costs when the defendant is convicted, until execution shall have been issued against the property of such convict, and returned unsatisfied for the want of property to satisfy the same, unless the court in which the trial was had shall certify that, in the opinion of such court, the costs can not be made out of the property of the defendant (r5).

SEC. 2345. In all cases where the county shall be liable to pay the costs and expenses in criminal cases, the circuit court in which the case was tried

(p5) This section creates a lien in favor of the state upon the property of the accused, wheresoever it may be found within the limits of the state, which binds it not only in his hands, but of any person in possession, from the time of arrest or indictment found until the accused is discharged or the fines and costs adjudged against him are paid; but this does not confiscate the property, or divest him of the possession and use of it during the prosecution. *Lawson, sheriff, v. Johnson & Ashley, 5—168.*

(q5) The liability of a county for costs incurred in the prosecution of offenses committed within its limits includes the costs accruing in another county upon a change of venue. *Independence County v. Dunkin, 40—329; County of Ouachita v. Saunders, 10—467; Pulaski County v. Irwin, 4—473.* Counties are liable for costs in all cases of acquittals on indictments. *Bradley County v. Bond, 37—226.*

The county is not liable where the prosecutor is adjudged to pay the costs. *County of Ouachita v. Saunders, supra.*

(r5) See *County of Ouachita v. Saunders, 10—467.*

This section is no longer applicable to cases of misdemeanor. See SEC. 2342.

shall adjust the same and cause the same to be certified to the county court (s5). *Rev. Stat., chap. 45, secs. 206, 207.*

SEC. 2346. The costs in all state prosecutions for any of the offenses enumerated in section 1772, and for all other offenses which may be committed in, or in respect of, the penitentiary, shall be paid out of the state treasury.

SEC. 2347. In the cases mentioned in the last preceding section, it shall be the duty of the judge to cause to be made out an accurate bill of costs therein, and certify to the correctness thereof; and it shall be the duty of the auditor to draw his warrant for the amount, when an appropriation shall be made therefor. *Act Dec. 26, 1848.*

BOND FOR COSTS IN ALL PROSECUTIONS IN INFERIOR COURTS.

SEC. 2348. In all prosecutions in cases less than felony, in courts of justices of the peace and in other inferior courts, the prosecutor, or some person for him, shall enter into bond, with good and sufficient security, for the payment of all the costs which may accrue in said prosecution (t5).

SEC. 2349. Such bond may be substantially in this form, to wit: State of Arkansas against A—— B——. I, ——, as principal, and ——, as security, bind ourselves to pay all costs in this cause. Signed this —— day of ——, A. D. ——.

SEC. 2350. If the accused be acquitted (u5), the court rendering the judgment of acquittal shall immediately render judgment for the costs against the principal and surety in the said bond; but if the accused be convicted, the court rendering the judgment shall, in addition to the fine or imprisonment which it shall impose upon the person convicted, render judgment against such person for all costs accrued in the case, and if such costs are not immediately paid, such convicted person shall, besides undergoing the penalty adjudged against him, be confined in the county jail at the rate of one day for every seventy-five cents adjudged against him for fine and costs (*).

SEC. 2351. It shall be lawful, however, for the justice or other officer, when he has strong reasons to believe that the person applying for a warrant has been, in plain violation of the criminal laws of this state, maltreated, either in person or property, to permit such person to prosecute without giving the bond required in section 2348. *Provided*, that the person so applying for a warrant shall make affidavit that he is unable to give security for the costs which may accrue in said prosecution.

SEC. 2352. Nothing in this act shall be so construed as to prevent officers of the law from arresting and prosecuting offenders when they are eye-witnesses of the offense. *Act March 23, 1871, secs. 1, 2, 3, 4 and 6.*

(s5) For mode of obtaining allowance of such costs, see SEC. 1412. As to mode of obtaining allowances of costs in cases of felony before examining courts, see SEC. 3263.

(t5) A failure of the prosecutor to give bond as required by this section is matter in abatement, and is waived by the defendant pleading not guilty, instead of requiring him by rule to give the bond. *Mann v. State*, 37—405.

This section has no application to prosecutions by indictment in the circuit court. *State v. Parker*, 39—174. The bond includes the costs which accrue on appeal in the circuit court. *Taylor v. State*, 39—291; *Perrin, ex parte*, 41—194.

(u5) It is only when the party prosecuted is *acquitted* that a judgment for the cost can be rendered against the prosecutor and his surety in the bond for cost. A *not. pros.* as to the defendant will not authorize such judgment. *Taylor v. State*, 39—291.

(*) See note (*) to SEC. 2318.

XXII.—PROCEEDINGS IN POLICE OR CITY COURTS.

SECTION

2353. Judge may fix time for its sessions.
 2354. No indictment necessary.
 2355. No written information or pleadings required.
 2356. Proceedings in circuit courts govern when applicable.
 2357. Issues, how tried.
 2358. Causes stand for trial, when.
 2359. Continuance may be granted.

SECTION

2360. Summons, when issued.
 2361. Requisites of.
 2362. Warrant of arrest may issue.
 2363. Summons, how executed.
 2364. Witnesses, subpoena for, etc.
 2365. Judge possesses power of clerk.
 2366. Defendant arrested, to be tried or bailed.

SECTION 2353. The judge of the police or city court may, by orders entered on its minutes, fix terms for its sessions, to which process may be returnable, but may hold the court at any time for the transaction of business brought before him.

SEC. 2354. No indictment shall be necessary in prosecutions for violation of the by-laws or ordinances of a city or town, nor in other prosecutions in police or city courts.

SEC. 2355. No written information or pleadings are required in prosecutions in which an indictment is not required.

SEC. 2356. The proceedings in circuit courts for the trial of criminal cases, so far as applicable, shall govern the proceedings of police or city courts, except as herein provided. *Crim. Code, secs. 300, 301, 310, 311.*

SEC. 2357. The issues of law and of fact may be tried by the judge or police justice, unless the defendant demand a trial by jury, in which case the same shall be tried by a jury of twelve men, unless the defendant shall consent to be tried by a less number. *Crim. Code, sec. 312, as amended 1871.*

SEC. 2358. All prosecutions in such courts shall stand for trial immediately, where the defendant is in custody, or on bail for the offense charged, or on the day to which the defendant has been summoned to appear. *Provided*, the summons was executed within the limits of the court's jurisdiction one day, or elsewhere ten days, before the day on which he is summoned to appear. If not executed as above provided, the trial shall be postponed to a day to be fixed by the court.

SEC. 2359. The court may, for good cause, grant continuances or postponements of the trial.

SEC. 2360. Upon information given by a peace officer or by a private person, on oath, to the judge or a clerk of a court, that an offense within the jurisdiction of such court has been committed, the judge or clerk shall issue a summons against the offender.

SEC. 2361. The summons mentioned in the last section shall command the peace officer to whom it is directed to summon the defendant (naming him) to appear in the court, on a day to be named in the summons, to answer the charge made against him of having committed an offense (naming or briefly describing it), and return the summons on a day to be named. It shall be signed by the judge or clerk and directed to the peace officer of the town or city, but may be executed by any peace officer of the city or county.

SEC. 2362. Upon information on oath, made to the judge of the court, he may order a warrant of arrest to be issued, which shall be similar to the summons, except in the command to arrest the defendant instead of summon him.

SEC. 2363. The summons shall be executed by the officer reading it to the defendant, or stating to him its contents; and, if required, the officer shall show it to him.

SEC. 2364. The clerk shall issue subpoenas for witnesses at the request of the officers of the city or of the defendant, and the court may compel their attendance in the manner prescribed in civil proceedings.

SEC. 2365. Where the judge acts as the clerk of the court the foregoing provisions as to the clerk shall apply to him.

SEC. 2366. When a person has been arrested and brought before the city court, or the judge thereof, charged with an offense within the jurisdiction (v5) of such court, he shall be forthwith tried, or, at the discretion of the judge, held to bail for his future appearance for trial or discharge from custody. *Crim. Code, secs. 302-309, 313.*

XXIII.—PROCEEDINGS IN JUSTICES' COURTS.

SECTION

2367. No written information or pleadings required.
 2368. Proceedings in circuit courts govern when applicable.
 2369. Trial and postponement of.
 2370. Trial postponed, proceedings.
 2371. Bail and surety for good behavior required, when.
 2372. Justice to issue summons, or warrant of arrest, when.
 2373. Warrant of arrest, only issued, when.

SECTION

2374. Warrant and summons to be similar to those in police courts.
 2375. Subpoenas for witnesses, etc.
 2376. Issues, how tried.
 2377. Jury, how summoned.

CHANGE OF VENUE.

2378. Change of venue, when granted.
 2379. Application for, how supported.
 2380. Order of removal, what to specify, etc.

SECTION 2367. No written information or pleadings shall be required in prosecutions in justices' courts.

SEC. 2368. The provisions of law regulating proceedings in the circuit courts in criminal cases, so far as applicable, shall govern the trial, verdict, judgment and execution in justices' courts, except as herein otherwise provided.

SEC. 2369. Where a person is brought, or in obedience to a bail-bond comes, before a justice of the peace, charged with the commission of an offense within the jurisdiction of his court, the justice shall forthwith proceed to the trial of the charge, or for sufficient cause may postpone the trial to a future day (w5).

SEC. 2370. If the trial is postponed, the defendant may be committed to the custody of a peace officer, or to jail, or discharged upon bail or without bail.

SEC. 2371. It shall be the duty of the justice to require bail of the defendant, upon its being made to appear that, unless bail be required, he will probably escape punishment, or that his discharge without bail would endanger persons or property; in which latter case the justice may also require security for the peace or for good behavior.

SEC. 2372. Where, from his personal knowledge, or from information given to him on oath (x5), a justice is satisfied that there are reasonable grounds for

(v5) See SECS. 1966, 797, 800, 814.

(w5) See SEC. 2013.

(x5) The informer must give bond, with surety for costs of prosecution (SEC. 2348), unless the justice is satisfied the prosecution is meritorious and the informer is unable to give security (SEC. 2351), or the information is made by a peace officer who was an eye-witness. SEC. 2352.

believing that a person has committed a public offense within the jurisdiction of his court, he shall either issue a warrant of arrest or a summons against such person.

SEC. 2373. The warrant of arrest shall not be issued unless the offense charged is one of actual or apprehended violence to person or property, accompanied with a breach of the peace, or the justice is satisfied that there are reasonable grounds for believing that the defendant will escape punishment unless arrested.

SEC. 2374. The warrant of arrest and the summons shall be similar to those prescribed for police courts.

SEC. 2375. The justice shall issue subpoenas for witnesses and for the production of documentary evidence, and enforce their attendance or production as in civil actions. *Crim. Code, secs. 314-321, 324.*

SEC. 2376. The issues of law and of fact may be tried by the justice, unless the defendant demands a trial by jury, in which case the same shall be tried by a jury of twelve men, unless the defendant shall consent to be tried by a less number. *Ib., sec. 322, as amended 1871.*

SEC. 2377. Upon a jury trial being lawfully demanded, the justice shall order a peace officer to summon a sufficient number of qualified jurors, from which the jury may be formed.

CHANGE OF VENUE.

SEC. 2378. Any criminal cause pending before a justice of the peace may be removed to some other township within the county in which the cause is then pending; *provided*, the defendant shall first file with such justice an affidavit, setting forth that the justice is a material witness for him, or is so prejudiced against him, or that the inhabitants of the township in which the cause is pending are so prejudiced against him, that he can not obtain a fair and impartial trial in such township.

SEC. 2379. Such order of removal shall be made on the application of the defendant, setting forth the foregoing facts, verified by affidavit, supported by the affidavit of some other credible person.

SEC. 2380. Every order for the removal of a criminal cause shall specify the cause of removal, and designate the township and justice to which the cause is to be removed. Such order shall also be entered on the docket of the justice granting the order, and all the papers in the cause shall be by him transmitted to the justice to whom the cause has been removed. *Act Nov. 10, 1875.*

XXIV.—PROCEEDINGS TO PREVENT THE COMMISSION OF OFFENSES.

SECTION	SUPPRESSION OF RIOTS.	SECTION	
2381.	Offenses, proceedings to prevent.	2396.	Arrest of defendant in presence of court.
2382.	Proclamation to be made by peace officers to disperse rioters.	2397.	on warrant.
2383.	not obeyed, rioters to be arrested.	2398.	warrant of, must recite, what.
2384.	Militia may be summoned to effect arrest.	2399.	Hearing before magistrate.
2385.	Militia officers to obey peace officer.	2400.	Time for which security may be required by circuit or police court.
2386.	Riotous assembly in city or town, what, and how dispersed.	2401.	Time for which security may be required by magistrate.
2387.	failing to disperse, duty and powers of officers.	2402.	Magistrate to return bond to clerk.
2388.	Persons refusing to aid officer, punished, how.	2403, 2404.	Defendant to be discharged, when.
2389.	Officers failing to do duty, punishment.	2405.	Proceedings in circuit court.
2390.	Militia may be called out, when and how.	2406.	Defendant committed to jail, order to recite what.
2391.	Officers executing process may summon <i>posse comitatus</i> , when.	2407.	Security in court may be by recognizance.
2392.	to report names of resisters, etc.	2408.	Who may take security after commitment.
2393.	refusal or neglect to assist, penalty.	2409.	Breaches of bond, what are.
2394.	Governor to call out military force, when.	2410.	action upon.
REQUIRING SECURITY TO KEEP THE PEACE, OR FOR GOOD BEHAVIOR.		ARREST AND CONFINEMENT OF DRUNKEN AND DISORDERLY PERSONS.	
2395.	Arrest may be made to require security to keep the peace, or for good behavior, when.	2411.	Peace officers to arrest drunken persons, when.
		2412.	disorderly persons, when.
		2413, 2414, 2415.	Proceedings in such cases.

SUPPRESSION OF RIOTS.

SECTION 2381. The commission of public offenses may be prevented by proceedings:

First. For suppressing riots and resistance to lawful authority.

Second. For requiring security to keep the peace, or for good behavior.

Third. For arresting and confining drunken and disorderly persons. *Crim. Code, sec. 9.*

SEC. 2382. When three or more persons shall be riotously, unlawfully or tumultuously assembled, as specified in section 1796, it shall be the duty of any judge, justice of the peace, sheriff, coroner or constable, who shall have knowledge or be informed thereof, to make proclamation among the persons so assembled, or as near them as he can safely come, charging and commanding them immediately to disperse themselves and peaceably to depart to their habitations or lawful business.

SEC. 2383. If, upon such proclamation being made, the persons so assembled shall not immediately disperse and depart as commanded, or if they shall resist such officer or prevent the making such proclamation, such officer shall command those present, and the power of the county if necessary, and shall disperse such unlawful assembly, arrest the offenders and take them before some judicial officer, to be dealt with according to law.

SEC. 2384. If any persons so assembled shall be armed, or make forcible resistance to the officer so making or attempting to make such proclamation, such officer shall summon to his aid a sufficient number of the militia, or other persons in arms, to disperse such assembly, arrest the offenders and maintain the authority of the law.

SEC. 2385. All militia officers and others who shall be so summoned shall give prompt obedience to such officer. *Rev. Stat., chap. 44, div. 8, secs. 2-5.*

SEC. 2386. When persons to the number of twenty or more are unlawfully or riotously assembled in a city or town, the sheriff of the county and his deputies, and the other peace officers and magistrates of such city or town, together with the mayor or other chief officers of the city or town, must go among the persons assembled, or as near them as possible, and in the name of the state command them to disperse.

SEC. 2387. If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, or cause them to be arrested, that they may be punished according to law, and may command to their aid all persons present or in the county.

SEC. 2388. If the persons commanded to aid the magistrates and officers neglect to do so without just cause, they shall be treated as part of the rioters and punished accordingly.

SEC. 2389. If such magistrate or other officer, having notice of an unlawful or riotous assembly, neglect to proceed to the place of assembly, or as near as he can with safety, and exercise the authority invested in him to suppress the same and arrest the offenders, he is guilty of a misdemeanor.

SEC. 2390. Where the unlawful assembly have the intent of committing a felony, or of offering violence to person or property, or of resisting by force the laws, the judge of the circuit court, or the mayor or chief officer of the city, or the sheriff of the county, or any two justices of the peace, may, by an order directed to a commanding officer of the militia, or of a military company, summon such military force under his command as shall be specified to appear at a specified time and place, armed and equipped, to aid the civil authorities in suppressing violence and enforcing the law, which order shall be forthwith obeyed by the commanding officer and troops.

SEC. 2391. When a sheriff, or other public officer authorized to execute process, finds or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper, and any military companies in his county, armed and equipped, to assist him in overcoming the resistance and in arresting and confining the resisters and their aiders and abettors, to be punished according to law.

SEC. 2392. The officer must report to the court from which the process issued the names of the resisters and their aiders and abettors, that they may be punished for contempt.

SEC. 2393. Every person commanded by a public officer to assist him in the execution of process who, without lawful cause, refuses or neglects to obey the command is guilty of a misdemeanor and contempt of the court from which the process issued.

SEC. 2394. If it appears to the governor that the power of the county is not sufficient to execute process, he must, on application of the sheriff, order such a military force from any other county or counties as is necessary. *Crim. Code, secs. 362-370.*

REQUIRING SECURITY TO KEEP THE PEACE, OR FOR GOOD BEHAVIOR.

SEC. 2395. A person may be arrested for the purpose of requiring of him security to keep the peace, or for his good behavior, in the following cases:

First. Upon the complaint, on oath, of a person threatened to a magistrate, that the defendant has threatened to commit an offense against his person or property, and upon the magistrate being satisfied, by an examination, on oath, of the complainant or others, that there are reasonable grounds to fear the commission of the offense threatened.

Second. Upon information given, on oath, to a magistrate, by any person, that the defendant is about to commit violence endangering human life, or is about to commit an offense amounting to felony, and the magistrate is satisfied, by an examination, on oath, of the informant or others, that there are reasonable grounds for apprehending the commission of such violence or felony.

Third. When a magistrate or court is satisfied, by the conduct or words of a person in the presence of such magistrate or court, or from proof given before such magistrate or court, that there are reasonable grounds for apprehending that such person will commit an offense against the person or property of another.

SEC. 2396. If the defendant is in the presence of the court or magistrate, a peace officer shall be verbally directed by the court or magistrate to take him into custody.

SEC. 2397. If not in the presence of a magistrate, he shall issue a warrant of arrest, directed to any peace officer of the county, city or town, commanding him to arrest the defendant and bring him before the magistrate.

SEC. 2398. The complaint, information or proof shall be briefly recited in the warrant.

SEC. 2399. Upon the defendant being brought before the magistrate, or being taken into custody by order of a court or magistrate, the court or magistrate shall hear the evidence which may be produced on either side, and if satisfied that there are reasonable grounds for apprehending that the defendant will commit an offense against the person or property of another, or will commit violence endangering human life, or an offense amounting to felony, may require of him surety to keep the peace, or for his good behavior, in a sum not exceeding five thousand dollars where human life is endangered, or one thousand dollars in other cases, and, in default of giving such security, may commit the defendant to jail.

SEC. 2400. When the security is required by a circuit or police court, it may be for keeping the peace, or for good behavior, any length of time not exceeding one year.

SEC. 2401. Where it is required by a magistrate, it shall be for keeping the peace, or for good behavior, until the defendant shall appear before the circuit court of the county, on the first day of its next term, before which court the defendant shall also be bound, with security, to appear, and not depart without leave of the court.

SEC. 2402. The magistrate shall return the bond of the defendant and his surety, for his appearance and keeping the peace, to the clerk of the circuit court before its next term.

SEC. 2403. Where the proceedings are taken upon the complaint of the person threatened, if he fails to appear before the court or magistrate, the defendant shall be discharged.

SEC. 2404. Unless the court or magistrate is satisfied that there are reasonable grounds for believing that the defendant will commit an offense against the person or property of another, or commit violence endangering human life, or an offense amounting to a felony, he shall be discharged.

SEC. 2405. Upon the defendant appearing, the court shall examine the case, and either discharge the defendant or require security to keep the peace, or for his good behavior, for a period not exceeding one year; and, in default of giving such security, may commit the defendant to jail for a period to be fixed by the court, not exceeding three months, unless he shall in the meantime give security.

SEC. 2406. Where a defendant is committed to jail for failure to give security, as above provided, the cause of commitment and the sum in which he is required to give security shall be stated in the written order of commitment, which shall be delivered to the jailer.

SEC. 2407. Where the security required in such cases is given in court, it may be by a recognizance entered into in open court and entered upon the records by the clerk.

SEC. 2408. Any magistrate may take the security required by the foregoing provisions of a defendant committed to jail for default of giving such security.

SEC. 2409. The following are the breaches of the bond required in such cases:

First. The failure of the defendant to appear in the circuit court, where the bond requires such appearance, or departing therefrom before he is lawfully discharged.

Second. A judicial conviction of the defendant of an offense involving a breach of the peace within the period specified in the bond.

Third. A judicial conviction of the defendant of a felony within the time specified in the bond, where the bond is for his good behavior.

SEC. 2410. The prosecuting attorney may proceed by action, in the name of the state, against the defendant and his security upon a breach of the bond. *Crim. Code, secs. 371-382.*

ARREST AND CONFINEMENT OF DRUNKEN AND DISORDERLY PERSONS.

SEC. 2411. It shall be the duty of all peace officers to arrest any drunken person whom they may find at large, and not in the care of some discreet person, and take him before some magistrate of the county, city or town in which the arrest is made.

SEC. 2412. It shall also be the duty of all peace officers to arrest any disorderly person whom they may find creating a disturbance by noise or other disorder, and take him before some magistrate of the county, town or city in which the arrest is made.

SEC. 2413. If the arrests authorized in the last two sections are made during the night, the officer shall keep them in confinement until the next morning, unless, in the case of a drunken person, he may deliver him into the

custody of some discreet person who will undertake to restrain and take care of him; and, if the arrests are made in the local jurisdiction of a police or city court, the person arrested shall be taken before the judge of such court, unless he be absent. *Ib.*, secs. 383-385.

SEC. 2414. Upon a drunken person being brought before a magistrate, he shall have the power to order him to be confined until he becomes duly sober.

SEC. 2415. Upon a disorderly person being brought before him, the magistrate may require of him surety for his good behavior, and for keeping the peace for a period not exceeding one year; and, on his failure to give such security, may commit him until he gives security; but in no event is the confinement to exceed thirty days. *Ib.*, sec. 387.

XXV.—DISPOSITION OF STOLEN PROPERTY.

SECTION	SECTION
2416. Stolen property, duty of officer having possession of.	2420. Stolen property, when to be sold; disposition of proceeds.
2417, 2418. duty of magistrate in relation to.	2421. perishable, may be sold.
2419. duty of court in which conviction is had.	2422. description of to be filed, when.

SECTION 2416. When property, alleged to have been stolen, shall have come into the possession of any sheriff, constable or any other person authorized to perform the duties of such officer, he shall hold the same, subject to the order of the officer hereinafter authorized to direct the disposition thereof.

SEC. 2417. Upon receiving satisfactory evidence of the ownership of such property, the magistrate who shall take the examination of the person accused of stealing such property may order the same to be delivered to such owner on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

SEC. 2418. If stolen property come into the hands of a justice of the peace, or other magistrate, upon satisfactory proof of the ownership thereof, it shall be delivered to the owner on the payment of the necessary expenses incurred in the preservation thereof, to be certified by the magistrate.

SEC. 2419. If the property stolen shall not have been delivered to the owner thereof, the court before which a conviction shall be had for stealing such property may, on proof of the ownership, order the same to be restored to the owner on payment of the expenses incurred in the preservation thereof.

SEC. 2420. If stolen property shall not be claimed by the owner within six months from the time any person may have been convicted for stealing the same, the court or magistrate authorized by the preceding provisions to order a restoration may order the same to be sold; and the proceeds of the sale, after payment of the expenses of the preservation and sale of such property, shall be paid into the county treasury, for the use of the county.

SEC. 2421. If the thing stolen be a living animal, or property of a perishable nature, the court or magistrate authorized to order a restitution may order

a sale thereof; and the proceeds shall be applied in the same manner as hereinbefore directed in respect to such stolen property.

SEC. 2422. In all cases of sale, as specified in the preceding section, a particular description of the property shall be made out in writing, and filed with the court or magistrate making the order of sale, so that the owner may be enabled to identify the same, if he shall claim the proceeds within the time before limited for making his claim. *Rev. Stat., chap. 45, secs. 228-234.*

XXVI.—CONVEYANCE OF PRISONERS (y5).

SECTION

2423. Officers, conveying prisoners, powers of.

2424. not liable to arrest, and may summon posse.

SECTION

2425. Officers may require jailer to keep prisoner.

SECTION 2423. Every officer or other person who shall have arrested, or have in his custody, under the authority of the laws of this state, any prisoner who is to be conveyed from one county to another, may carry such prisoner through such parts of any county as shall be in the ordinary route of travel from the place where such prisoner shall have been arrested to the place where he is to be conveyed and delivered, under the process or authority by which such person shall have been arrested, or is detained.

SEC. 2424. The officer or person having such prisoner in charge shall not be liable to arrest on his route; and he shall have the like power to require any person to aid in securing such prisoner, and retaking him if he escape, as sheriffs or other officers have in their respective counties; and a refusal or neglect to render such aid shall be an offense punishable in the same manner as for disobedience to a summons to assist in the execution of process.

SEC. 2425. The jailer of any county through which any prisoner may be taken is required to receive and safely keep such prisoner, in the jail of which he has the charge, when thereto requested by the officer or person having lawful charge of such prisoner, and to redeliver him on the demand of such officer or person. *Rev. Stat., chap. 45, secs. 237-239.*

XXVII.—PARDON.

SECTION

2426. General power of governor to grant; how granted in cases of treason.

2427. on condition convict leaves the state.

2428. breach of condition; arrest; reward.

SECTION

2429. Pardon, recommitment of convict.

2430. breach of; rule as to imprisonment in such case of convict.

2431. when convict to leave the state.

SECTION 2426. In all criminal and penal cases, except in those of treason and impeachment, the governor shall have power to grant reprieves, commuta-

(y5) See SECS. 4897-4909.

tions of sentence and pardons after conviction, and to remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the adjournment of the next regular session of the general assembly. He shall communicate to the general assembly at every regular session each case of reprieve, commutation or pardon, with his reasons therefor, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon or reprieve. *Art. VI, sec. 18, Const.*

SEC. 2427. Where any person convicted of a criminal offense shall agree, as a condition of his pardon, to leave the state and never again return to it, the governor may pardon him on such conditions; and if such convict should at any time after the granting of such pardon be found within this state the sentence passed on him by the court shall be executed in the same manner as if no such pardon had been granted.

SEC. 2428. Any person who shall apprehend any criminal within the bounds of this state who may have been pardoned on the condition of his leaving the state and not again returning to it, and shall deliver such criminal to the proper officer of the county in which he was convicted, shall be entitled to receive a reward of two hundred dollars, to be paid out of the state treasury, on the certificate of the governor, out of any appropriation made for that purpose.

SEC. 2429. Upon the receipt of any such criminal by the sheriff or jailer of the proper county, it shall be his duty to give the person from whom he received such criminal a receipt for his delivery, and he shall commit him to jail, and there keep him until he shall have fully satisfied the sentence of the court, if such sentence was imprisonment.

SEC. 2430. The time that any criminal may have remained in prison prior to his pardon shall not be computed as any part of the sentence.

SEC. 2431. Every person pardoned for a criminal offense, on condition of his leaving the state, shall be allowed ten days after his release to leave the state; and during that time he shall not be arrested under the preceding provisions of this act in relation to conditional pardons. *Rev. Stat., chap. 45, secs. 243, 244, 246, 247, 249.*

XXVIII.—APPEALS TO CIRCUIT COURT IN CRIMINAL CASES.

SECTION

2432. Appellate jurisdiction of circuit courts.
2433. The state, no right of appeal.
2434. No appeal after payment of judgment or lapse of sixty days.
2435. Appeal bond, judgment on.

SECTION

2436. No appeal without bond.
2437. Case tried anew on appeal.
2438. Attorney's fee, when allowed.
2439. Money collected returned to defendant, when.

SECTION 2432. The circuit court shall have appellate jurisdiction over the judgments of justices' courts, police and city courts (z5), in their respective

(z5) Circuit courts have jurisdiction in appeals from corporation courts in both civil and criminal cases. *Ulery v. Ft. Smith*, 35—214.

counties, without regard to the amount in controversy. *Crim. Code, sec. 354, as amended by act Dec. 16, 1874.*

SEC. 2433. The state shall have no right of appeal from judgments of the justices' courts.

SEC. 2434. No appeal shall be taken from a judgment of a justice's court after it has been paid or collected, nor after sixty days from the rendition of the judgment (a6).

SEC. 2435. In all cases where a person has been convicted of a misdemeanor, and shall appeal, there shall be no *supersedeas* of the judgment unless bond shall be given, with approved security, conditioned for the payment of the fine and all costs of prosecution; which said bond shall be approved by the court or justice of the peace rendering the judgment, and shall be transmitted to the appellate court. In case of conviction, judgment shall be rendered on such bond against principal and sureties without further notice (b6). *Act March 22, 1881, sec. 7.*

SEC. 2436. No appeal shall be allowed until the execution and approval of such bond. *Act March 15, 1879, sec. 2.*

SEC. 2437. Upon the appeal the case shall be tried anew, as if no judgment had been rendered, and the judgment shall be considered as affirmed if a judgment for any amount is rendered against the defendant; and thereupon he shall be adjudged to pay the costs of the appeal (c6).

SEC. 2438. Upon an affirmance an attorney's fee of ten per cent. on the amount of the judgment shall be taxed as part of the costs, and the costs in the justice's court shall be taxed as part of the costs of the appeal.

SEC. 2439. If judgment is rendered for the defendant, any money paid into the circuit court which has been collected of the defendant on the original judgment shall be forthwith returned to the defendant. *Crim. Code, secs. 355-360.*

(a6) It is the duty of the appellant to file his appeal bond and the original papers and transcript of the justice's docket in the circuit court within sixty days after the rendition of the judgment; but his failure to do so will only be cause for dismissing the appeal on motion of the state, and will not deprive the court of jurisdiction to try the case upon a transcript filed after the sixty days, but in time for the appeal term of the court. *Perrin, ex parte*, 41-194.

(b6) The justice rendering the judgment must take and approve the bond and transmit it to the appellate court. *Perrin, ex parte*, 41-194; *Morrison v. State*, 40-448.

The appeal bond, when executed and approved by the justice, stays the judgment, and no *supersedeas* by the clerk is necessary. If execution has not been issued, none can be issued. If execution has been issued, the justice can recall or supersede it. *Perrin, ex parte, supra*. The justice should transmit to the appellate court, with the appeal bond and other original papers, an authenticated transcript of his docket entries. *Ib.*

When the appellant has filed an imperfect appeal bond, the circuit court may, in its discretion, allow him to file another. *Morrison v. State, supra*.

(c6) The accused must be tried in the circuit court, on appeal, for the same offense for which he was tried before the justice. *Marre v. State*, 36-222; *Thomas v. State*, 41-408.

The court is not authorized to affirm the judgment on failure of the appellant to appear, but may, in its discretion, order him to be brought in on warrant, or may dismiss his appeal and order the justice to execute his judgment. *Thomas v. State, supra*.

XXIX.—APPEALS TO THE SUPREME COURT IN CRIMINAL CASES.

SECTION

IN FELONIES.

2440. Appellate jurisdiction of supreme court.
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 2442. No appeal or revival after death of defendant.
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 2453. Judgment of acquittal which bars future prosecution, not reversible.
 2454. of conviction, for what errors reversed.
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SECTION

IN MISDEMEANORS.

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 2464. How judgment suspended by.
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WHEN APPEALS STAND FOR TRIAL AND DECISION.

2472. Appeals in criminal cases take precedence.
 2473. when they stand for trial.
 2474. in felonies, stand for trial, when.
 2475. when decided.
 2476. judgment for costs against defendant, when.

IN FELONIES.

SECTION 2440. The supreme court shall have appellate jurisdiction in prosecutions for felonies, subject to the restrictions herein contained.

SEC. 2441. An appeal shall only be taken on a final judgment, except on behalf of the state (d6).

SEC. 2442. No appeal shall be taken after the defendant's death, and upon his death an appeal taken during his life shall abate, and shall not be revived.

SEC. 2443. No summons or notice shall be necessary upon an appeal.

SEC. 2444. Upon an appeal being prayed, the circuit court shall grant to the defendant a reasonable time for obtaining a transcript of the record, for submitting the transcript to a judge of the supreme court for his allowance of the appeal, for filing the same in the clerk's office of the supreme court, and obtaining the certificate of appeal (e6).

SEC. 2445. An appeal may be taken by the defendant in the following manner only:

First. The appeal must be prayed during the term at which the judgment is rendered, and the prayer noted on the record in the circuit court.

Second. The appeal shall be allowed by a judge of the supreme court after an examination of a certified transcript of the complete record, unless he is thereupon satisfied that there are no reasonable grounds for believing that any error to the prejudice of the defendant has been committed for which the judgment should be reversed, and that the appeal is prayed for delay merely.

(d6) Where an interlocutory order is entered under an indictment for felony, by which the jurisdiction of the court is rendered doubtful, it is proper that an appeal should be taken to the supreme court on behalf of the state. *State v. Flynn*, 31—35.

(e6) See *Youngblood v. State*, 35—35.

Third. The appeal is taken by lodging in the clerk's office of the supreme court, within sixty days after the judgment, a certified transcript of the record (f6), with the certificate of the allowance of the appeal indorsed on the transcript, under the signature of one of the judges of the supreme court.

SEC. 2446. The clerk of the supreme court shall thereupon issue a certificate that an appeal has been taken, which shall suspend the execution of the judgment.

SEC. 2447. A judge of the supreme court may extend the time for filing the record.

SEC. 2448. The court may act upon and decide a case in which the appeal was not prayed or the record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit.

SEC. 2449. If the judge of the supreme court refuses an appeal, he shall indorse upon the record the words "an appeal refused," with his signature thereto, and forthwith transmit to the clerk of the supreme court a certificate of his refusal.

SEC. 2450. After such refusal, no appeal shall be taken, and, if surreptitiously obtained afterward, shall be immediately dismissed by the court. *Provided*, however, that two judges of the supreme court may revoke the order of refusal and grant the appeal.

SEC. 2451. Where an appeal in behalf of the state is desired, the prosecuting attorney shall pray the appeal during the term at which the decision is rendered, whereupon the clerk shall immediately make a transcript of the record and transmit the same to the attorney-general, or deliver the transcript to the prosecuting attorney, to be transmitted to him.

SEC. 2452. If the attorney-general, on inspecting the record, is satisfied that error has been committed to the prejudice of the state, and upon which it is important, to the correct and uniform administration of the criminal law, that the supreme court should decide, he may, by lodging the transcript in the clerk's office of the supreme court within sixty days after the decision, take the appeal (g6).

SEC. 2453. A judgment in favor of the defendant, which operates as a bar to a future prosecution of the offense, shall not be reversed by the supreme court (h6).

SEC. 2454. A judgment of conviction shall only be reversed for the following errors of law to the defendant's prejudice appearing upon record (i6) :

First. An error of the circuit court in admitting or rejecting important evidence.

Second. An error in instructing, or in refusing to instruct, the jury.

Third. An error in failing to arrest the judgment.

(i6) The record of the circuit court may be amended so as to make it speak the truth in a criminal, as well as in a civil case, after appeal or writ of error, the prisoner in a criminal case being brought into court, and the amended record brought up to the supreme court by *certiorari*. *Sweeney v. State*, 35—585; *Binns v. State*, *Ib.*, 118; *Freed v. State*, 21—213.

(g6) Where it does not appear that the provisions of this and the preceding section have been complied with, the case will be stricken from the docket of the supreme court. *State v. Cox*, 29—115.

(h6) Where a defendant, indicted for a misdemeanor punishable by fine only, has been tried, acquitted and the judgment reversed and cause remanded, he may be tried again upon the same indictment. *Jones v. State*, 15—261; *State v. Czarnikow*, 20—160.

(i6) See *Wallace v. State*, 28—531.

Fourth. An error in allowing or disallowing a peremptory challenge.

Fifth. An error in overruling a motion for a new trial.

SEC. 2455. When a judgment of death has been affirmed, and the day of execution passed, the clerk of the supreme court shall transmit to the governor a certificate of the affirmance and of the judgment, to the end that a warrant for the execution of the judgment may be issued by the governor.

SEC. 2456. An appeal by the state from a decision of the circuit court shall not suspend the proceedings in the case.

SEC. 2457. The decisions of the supreme court shall be obligatory on the circuit court as being the correct expositions of the law.

SEC. 2458. If a judgment of confinement in the penitentiary has been executed before the certificate of appeal was delivered to the sheriff whose duty it was to execute the judgment, the defendant shall remain in the penitentiary during the pendency of the appeal, unless discharged by the expiration of his term of confinement, or by pardon; and, upon a reversal, if a new trial is ordered, shall be removed back from the penitentiary to the county jail from which he was brought by the sheriff of said county (j6).

SEC. 2459. Upon a mandate of reversal, ordering a new trial, being filed in the clerk's office of the circuit court in which the judgment of confinement in the penitentiary was rendered and executed, the clerk shall deliver to the sheriff a copy of the mandate and precept, authorizing and commanding him to bring the defendant from the penitentiary to the county jail, which shall be obeyed by the sheriff and keeper of the penitentiary.

SEC. 2460. If the defendant, upon the new trial, is again convicted, the period of his former confinement in the penitentiary shall be deducted by the court from the period of confinement fixed in the last verdict of conviction.

IN MISDEMEANORS.

SEC. 2461. The supreme court shall have appellate jurisdiction in prosecutions for misdemeanors.

SEC. 2462. No summons is necessary on an appeal.

SEC. 2463. The appeal shall be prayed during the term at which the judgment was rendered, and shall be granted upon the condition that the record is lodged in the clerk's office of the supreme court within sixty days after the judgment (k6).

SEC. 2464. The appeal shall not suspend the execution of judgment, unless the defendant causes to be executed, before the clerk of the circuit court, a covenant by good security, to be approved by said clerk, for the payment, in case the judgment is affirmed, of the fine and costs, and costs of appeal and all damages thereon, and for the surrender of the defendant, in execution of the judgment, where the judgment is for imprisonment, or, on his failure so to surrender himself, for the payment of a sum equal to two dollars for every day of imprisonment adjudged, and causes said covenant to be copied into the transcript, upon which, being lodged with the clerk of the supreme court, he shall issue a certificate that execution of the judgment is suspended.

(j6) See *Youngblood v. State*, 35—35.

(k6) The supreme court will not take jurisdiction of an appeal in a criminal cause where the transcript is not filed within sixty days after the judgment; and an agreement of the prosecuting attorney who tried the case to waive the time will not be regarded. *Siverburg v. State*, 30—39.

SEC. 2465. When the prosecuting attorney prays an appeal, the clerk shall forthwith make and certify a complete transcript of the record, and transmit the same to the attorney-general, or deliver it to the prosecuting attorney for that purpose.

SEC. 2466. If the attorney-general, on inspecting the same, believes it proper to take the appeal, he shall do so by filing the transcript in the clerk's office of the supreme court in sixty days after the judgment.

SEC. 2467. A judgment on a verdict of acquittal of an offense, the punishment of which is imprisonment, shall not be reversed.

SEC. 2468. The judgment shall only be reversed for errors of law apparent on the record to the prejudice of the appellant.

SEC. 2469. Upon the affirmance of a judgment on the appeal of the defendant, an attorney's fee of twenty dollars, to be paid to the prosecuting attorney, shall be taxed as part of the costs of the appeal, and upon the reversal of a judgment upon an appeal by the plaintiff, a fee of five dollars.

SEC. 2470. Where the prosecution is by a penal action, the appeal shall be similar in all respects to appeals in civil actions.

SEC. 2471. Where the execution of a judgment for a fine is suspended, as herein provided, upon an affirmance of the judgment, damages at the rate of ten per cent. shall be awarded against the defendant, one-fourth of which shall be for the use of the prosecuting attorney.

WHEN APPEALS STAND FOR TRIAL AND DECISION.

SEC. 2472. Appeals in criminal cases shall take precedence over all other business of the court, and be placed first upon the docket for trial.

SEC. 2473. They shall stand for trial at the first term succeeding the lodging of the transcript in the clerk's office of the supreme court; *provided*, it is so lodged ten days before the commencement of the term.

SEC. 2474. When an appeal by the defendant in a case of felony is lodged within ten days before the commencement of the term, or during the term, it shall stand for trial on the tenth day after it was so lodged.

SEC. 2475. The appeal shall be decided at the same term at which it is tried.

SEC. 2476. On the affirmance of a judgment, where the appeal is taken by the defendant, and on the reversal of the judgment, where the appeal is taken by the state, a judgment for costs shall be rendered against the defendant. *Crim. Code, secs. 325-353.*

CHAPTER XLVII.

DEAF-MUTE INSTITUTE.

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SECTION 2477. An institute of learning is hereby established in the State of Arkansas for the education of deaf-mutes of the state, by and under the name and title of the Arkansas Deaf-Mute Institute (*).

SEC. 2478. The government of the institute for the education of the deaf-mutes shall be under the direction of a board of trustees, to consist of five members, who shall be appointed by the governor, as provided in section 2479. *Act July 17, 1868, secs. 1, 2, as amended by act April 9, 1869.*

SEC. 2479. The governor shall immediately after the passage of this act, and on the second Wednesday after the organization of the next general assembly, and the same day every two years thereafter, appoint, by and with the advice and consent of the senate, five persons to be trustees for said institute, who shall each hold office for the term of two years, or until their successors are qualified. *Act March 21, 1883.*

SEC. 2480. The state treasurer shall be *ex officio* a member and treasurer of the board of trustees. All the members of said board shall be electors of the state. Any member permanently removing from the state thereby vacates his office.

SEC. 2481. Said trustees shall receive for their services three dollars per day for each day actually employed in behalf of the institution, which shall be paid in the same manner as provided for the payment of other debts due by the institution.

SEC. 2482. The persons appointed trustees shall, before entering upon the duties of their office, severally take and subscribe the oath prescribed by the

(*) This institute was located at Little Rock by a board of commissioners in accordance with act approved July 17, 1868.

constitution, and an oath to faithfully discharge their duties as such trustees, and to obey all laws in force relative to said institution.

SEC. 2483. The board of trustees may take and hold in trust for the state, to the use of the institute, any lands conveyed or devised, and any money or other personal property given or bequeathed, to be applied to the use and benefit of the institute. *Act July 17, 1868, secs. 2, 3, 4, as amended by act April 9, 1869.*

SEC. 2484. The board of trustees shall have power to make all contracts for the rent or construction and repair of any building and appurtenances thereto belonging or used by said institute; to appoint a principal, matron, assistant teachers, who shall be qualified to impart instruction to mutes, a steward and such other officers as the board may deem necessary to meet the requirements of the institute. The principal and matron shall constantly reside in the institution, but the assistant teachers and other officers may occupy other buildings, to be provided at their own expense. No person shall lodge or board in said institute who is not a pupil thereof, except its officers and their families.

SEC. 2485. The treasurer shall have the custody of all moneys, notes, securities and other obligations belonging to the deaf-mute institute, and shall be responsible for the same under his bond and oath as state treasurer. He shall pay all the expenses of said institute out of the funds appropriated for the use of the same, upon warrants drawn by the auditor in favor of the trustees. The auditor shall issue his warrants upon orders signed by the president and at least two members of the board of trustees, except as herein otherwise provided.

SEC. 2486. The accounts and records of said institute shall be so kept by the board of trustees and the principal as to show: The kind, quantity, cost and of whom bought of each article purchased for the use thereof, the condition of the institute, the specific amount of the receipts and expenditures, the number, name, date of admission, age, cause of deafness, and length of time under instruction, of beneficiaries, and all other pupils received into the institute, and the number and salaries of officers and employes, which shall be embodied in a report made to the governor on or before the convening of the general assembly at each regular session, and be by him laid before that body with his message.

SEC. 2487. Each deaf-mute applying for admission as a pupil shall be between the ages of nine and thirty years, of fair natural intellect, and free from any contagious disease.

SEC. 2488. The officers of the board of trustees shall be a president, vice-president, secretary and treasurer, and, except the treasurer, shall be elected annually on the first Monday in January. Should a vacancy occur, the board may hold a special election to fill the same.

SEC. 2489. The board of trustees shall, in their rules, regulations and by-laws, prescribe the duties of the respective officers, except as hereinafter provided. They may remove at their discretion, if deemed for the good of the institute, any officer or employe of the institute.

SEC. 2490. The board of trustees shall determine the salary of each of the said resident officers, subject to the approval of the governor and state auditor;

such salaries shall be paid quarterly-yearly to the said officers by the treasurer, as provided in section 2485, out of any moneys appropriated for the institute.

SEC. 2491. For all damages for trespass and other wrongs upon the buildings or any other property, personal or real, belonging to said institute, actions may be maintained in the name of the state, and all damages received in such actions shall be appropriated to the reparation of the property injured.

SEC. 2492. The principal shall be a teacher of knowledge, skill and ability in his profession, and of experience in the management and instruction of mutes; he shall not, while such principal, engage in any other employment, but shall, to the exclusion of all other business, devote himself to the instruction, supervision and care of the institute and its inmates. Before he enters upon the duties of his office, he shall take an oath that he will diligently, faithfully and impartially discharge all the duties required of him by law.

SEC. 2493. The principal shall be the chief executive officer of the institute, and shall have the care and control of everything connected with the management and discipline thereof; he shall see that the several officers faithfully and diligently discharge their respective duties, and upon failure thereof make report of the facts to the board. He shall receive such mutes as are entitled to admission to the institute. The board of trustees may at any time discharge any pupil for gross or immoral conduct, or other sufficient cause.

SEC. 2494. Two of the trustees shall, together, visit the institute monthly; a majority of them quarterly; and all the trustees shall, together, make one visit during the year.

SEC. 2495. Any deaf-mute who may be admitted into the institute and supported as a beneficiary, at the expense of the state, shall be permitted to remain in said institute for seven years, unless, in the judgment of the trustees, he or she shall be sooner discharged.

SEC. 2496. It shall be the duty of the principal to furnish, or cause to be furnished, suitable and proper boarding and lodging, as well as suitable instruction, for all deaf-mutes received as beneficiaries. *Provided*, he shall receive into the institution other deaf-mutes, according to such regulations as the trustees may prescribe.

SEC. 2497. All persons employed in the institute, while so employed, shall be exempt from serving on juries, and the certificate of the principal, under his own hand, shall be sufficient evidence of such employment.

SEC. 2498. Any parent or guardian who may be unable to pay the expenses of transportation from their homes to the institute, of such deaf-mutes as are under their charge, in consequence of poverty, shall make a written statement of the facts in the case, and lay the same before the county court of the county in which they reside, when said court shall immediately take action thereupon, and, if in its judgment the statements are well sustained, shall issue a certificate setting forth the facts, signed by the judge of the court and clerk. Such certificate shall be the authority for the sheriff of the county to furnish transportation for such mute from his home to the institute, by the nearest and most practicable route. Such certificate, countersigned by the president of the board of trustees, shall be the authority for the auditor to issue his warrant in favor of said sheriff for the reimbursement of all moneys paid out for the transportation of such mute or mutes from their homes to the institute (a).

(a) But see SECS. 2508, 2509, by which this section was probably by implication repealed.

SEC. 2499. It shall be the duty of the sheriff of each county to ascertain and keep a record of how many deaf-mutes, with their names, ages and sex, there are in his county between the ages of nine and thirty years, and report the same to the board of trustees of said deaf-mute institute at least once in each year.

SEC. 2500. Where deaf-mutes have no parents, the board of trustees of said institute are by law made the guardians (b) of all such deaf-mute orphans, and it is hereby made the duty of the sheriff of each county to send all such orphan mutes to the board of trustees at such institute, who shall perform the duties of guardians to said mutes. Said sheriff shall receive for said service the necessary expenses incurred in traveling by the nearest and most practicable route to and from said institute, and such further sum for his services as the county court of his county may direct and allow.

SEC. 2501. All property pertaining to the deaf-mute institute shall be exempt from taxation.

SEC. 2502. There shall be no cruel or severe punishment inflicted upon the pupils of the institute.

SEC. 2503. The board of trustees shall receive sealed proposals for furnishing said institute with necessary provisions and fuel, thirty days' notice whereof shall be given by said board by three insertions in at least two newspapers in each congressional district of the state; and said proposals shall be opened at the office of the secretary of state, in the City of Little Rock, on the first Monday in January of each year, at 12 o'clock M., and the contract for furnishing said supplies shall be let to the lowest responsible bidder, with good and sufficient bond and security for the faithful observance of the terms of the contract. *Act July 17, 1868.*

SEC. 2504. The principal of the said institute is hereby required to keep a list of all applications for admission in their numerical order.

SEC. 2505. The applicants shall be received in the said order, without restriction on account of race or color. *Act March 21, 1871.*

INDIGENT PUPILS.

SEC. 2506. Whenever application is made for the admission of any deaf-mute person into the state institution for the education of the deaf and dumb (*), as a beneficiary of the privileges thereof, such application shall be accompanied by the certificate of the county judge that such person is a legal resident of the county in which it is claimed that he resides.

SEC. 2507. When such person shall, upon proper application, be admitted as a pupil of said institution, it shall be the duty of his parent, guardian or other friends to suitably provide him with clothing at the time of his entrance into the school and during his continuance therein; also, to defray his traveling expenses to and from the institution, not only at the time of his first entrance and final departure, but at any other time when it shall become necessary for him to leave or return to the school.

(b) See SEC. 3468.

(*) This act applies equally to the *School for the Blind*, and will also be found in the chapter containing the law governing that institution. For convenience the form of the statute is changed so as to be applicable, in each chapter, only to the institution there provided for.

SEC. 2508. In all cases where suitable clothing and means for defraying traveling expenses are not otherwise supplied to the pupils of said institution, the same shall be provided by the superintendent or principal thereof, who shall make out and file with the auditor of state accounts therefor, separate in each case, against the respective counties from which such pupils are sent, in an amount not exceeding forty dollars per annum for any one pupil, which accounts shall be severally signed by the superintendent or principal, and the auditor of state shall draw his warrant on the treasurer for said amounts, which shall be paid out of any money in the treasury not otherwise appropriated. *Provided*, that the amount drawn by said institution for the aforesaid purposes in one year shall not exceed two thousand dollars, and each account thus certified shall be charged to the county from which the pupil named therein was sent.

SEC. 2509. The auditor of state shall forward a certified copy of each account so filed with him to the sheriff of the proper county, who shall proceed to collect the same in the name of the state, as other debts are collected, and the money so collected shall be paid over to the treasurer of state, who shall give receipts therefor as in cases of other moneys paid into the state treasury. *Provided*, that if the sheriff shall be unable to collect the amount of any bill from the parents or estate of any pupil, then the same shall be refunded to the state out of the county treasury.

SEC. 2510. In case of the death of any pupil at said institution aforesaid, where funeral expenses are not otherwise provided for, an account thereof shall be made out, certified to and collected, and applied in like manner as provided in the preceding sections of this act.

SEC. 2511. Whenever it shall be deemed necessary by the proper officers of the said institution, in accordance with the by-laws and regulations thereof, to have pupils removed, either temporarily, on account of ill health or the vacation of the school, or permanently, on account of having completed their course of instruction, or been found disqualified from any cause for a longer continuance in the school, the parents or guardians of such pupils, if they have any, shall promptly remove them upon the requirement of said officers; and, in case they shall not be thus provided for, it shall be the duty of the superintendent or principal of such institution to cause them to be so removed to their houses or delivered to the proper officers of the counties in which they may reside, and the expense of such removal shall be refunded to said institution in the same manner as provided in sections 2508 and 2509, and the county sheriff may collect it in the same manner as provided in said sections.

SEC. 2512. In case of pupils now in said institution who may need the benefit of this act, and who may not have a certificate from the judge of the county in which they reside as to their residence, the certificate of two responsible citizens of the county shall be sufficient. *Act Dec. 14, 1875.*

CHAPTER XLVIII.

DEFAULTERS.

SECTION

2513. Who are, and to what offices, not eligible.
2514. County treasurer to certify to clerk a list of persons indebted to the county.
2515. Clerk to certify to governor whether each person elected is a defaulter.
2516. Auditor to furnish to governor a list of defaulters to the state, when.

SECTION

2517. Duty of governor as to withholding commissions of defaulters.
2518. Not to withhold commission, when.
2519. Governor to send copies of certificates to general assembly.
2520. When person elected by general assembly a defaulter, duty of governor.
2521. Penalty for failure to perform duties.

SECTION 2513. No collector or holder of public money in this state shall be eligible to a seat in either house of the general assembly, or to any office of trust or profit in this state, until he shall have accounted for and paid over all sums for which he may be liable (a).

SEC. 2514. It shall be the duty of the county treasurer of each county, within ten days after each election for members of the general assembly and other civil officers, to make out and certify to the clerk of the county court a true and perfect list or statement of the names of all persons indebted to the county and the amount charged to each person.

SEC. 2515. It shall be the duty of the clerk of the county court to certify to the governor, on each abstract or certificate of election he may be required to make, whether the person whose election he is certifying is a defaulter to the county, and, if so, for what amount.

SEC. 2516. It shall be the duty of the auditor, within ten days after each election for members of the general assembly and other civil officers, to furnish the governor a certified list or statement of all persons indebted to the state and the amount charged to each person.

SEC. 2517. If it shall appear to the governor, from the certificates furnished him as aforesaid, that any person returned elected to the office of clerk, sheriff, coroner, county treasurer, county surveyor, or justice of the peace for any county, is a defaulter to the state or county, he shall withhold the commission of such person until the first day of December thereafter; and if such person shall fail to present to the governor a certificate from the proper officer of his discharge from liability to the state or county, such office shall be deemed vacant.

SEC. 2518. The provisions of the preceding section shall not be so construed as to authorize the governor to withhold the commission from any person elected to any of the offices before mentioned who does not appear by such certificates to be a defaulter.

SEC. 2519. It shall be the duty of the governor, immediately after the commencement of each regular session of the general assembly, to cause copies of such certificates to be transmitted to each house of the general assembly; and if it shall appear from such certificates that any person elected a member

(a) See art. V, sec. 8, *Const.*; *Taylor v. The Governor*, 1—21; *Sweepston v. Barton*, 39—549.

of either house of the general assembly is a defaulter to the state or any county, his seat shall be declared vacant, unless he shall forthwith produce a certificate of his discharge from such liability.

SEC. 2520. If any person shall be elected to any office of trust or profit by the joint vote of both houses of the general assembly who from such certificates shall appear to be a defaulter either to the state or any county, it shall be the duty of the governor to withhold the commission or credential from such person and forthwith report the fact to the general assembly.

SEC. 2521. If the auditor of state, or any clerk or county treasurer, shall neglect or refuse to perform any of the duties prescribed in this act, or shall make a false return, he shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly. *Rev. Stat., chap. 47.*

CHAPTER XLIX.

DESCENTS AND DISTRIBUTIONS (a).

SECTION

- 2522. General law of descent.
- 2523. Posthumous children, how to inherit.
- 2524. Illegitimate children to inherit and transmit on part of mother.
- 2525. How legitimized by subsequent intermarriage.
- 2526. Issue of marriages null in law or dissolved by divorce legitimate.
- 2527. No bar that ancestor was alien.
- 2528. No kindred to inherit, whole to go to wife or husband; no wife or husband, estate to escheat.
- 2529. Some children living and some dead, to take per stirpes.
- 2530. This rule to apply in every case where those entitled to inherit are in equal degree of consanguinity to intestate.
- 2531. If there be no descendants, rules of descent:
 1. Where estate comes by father; 2. By mother; and 3. Where a new acquisition.
- 2532. Estate, how to go, where no father or mother.
- 2533. Those of half-blood, how to inherit.
- 2534. In cases not herein provided for, descent to be according to common law.

SECTION

- 2535. All who inherit, to do so as tenants in common.

ADVANCEMENT.

- 2536. By settlement or portion to child, how reckoned, and effect of.
- 2537. When not equal to share of estate.
- 2538. Value of such advancement, how ascertained.
- 2539. Maintenance, education, etc., not to be taken as advancement.

CONSTRUCTION.

- 2540. Of term "real estate."
- 2541. Of term "inheritance."
- 2542. Where person described as "living."
- 2543. Of expression, "come on part of father," or "on part of mother."

HEIRS AT LAW MAY BE MADE BY DECLARATION IN WRITING.

- 2544. Heir at law may be made by declaration in writing.
- 2545. Declaration must be recorded before of effect.

SECTION 2522. When any person shall die, having title to any real estate of inheritance, or personal estate (b), not disposed of, nor otherwise limited by marriage settlement, and shall be intestate as to such estate, it shall descend and be distributed, in parcenary, to his kindred, male and female, subject to the payment of his debts and the widow's dower, in the following manner:

First. To children, or their descendants, in equal parts.

(a) See *Kelley v. McGuire*, 15—555; *Scull v. Vaugine*, *Ib.*, 695; *Bird v. Lipscomb*, 20—19; *Galloway v. Robinson*, 19—401; *Campbell v. Ware*, 27—65; *Beard v. Mosely*, 30—517; *Oliver v. Vance*, 34—564; *Kountz v. Davis*, *Ib.*, 590.

(b) See *Loftis v. Glass*, 15—680; *Gibson v. Dowell*, 42—164.

Second. If there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants, in equal parts.

Third. If there be no children, nor their descendants, father, mother, brothers or sisters, nor their descendants, then to the grandfather, grandmother, uncles and aunts and their descendants, in equal parts, and so on in other cases, without end, passing to the nearest lineal ancestor, and their children and their descendants, in equal parts.

SEC. 2523. Posthumous children of the intestate shall inherit in like manner as if born in the life-time of the intestate, but no right of inheritance shall accrue to any person other than the children of the intestate, unless they be born at the time of the intestate's death.

SEC. 2524. Illegitimate children shall be capable of inheriting and transmitting an inheritance, on the part of their mother, in like manner as if they had been legitimate of their mother (c).

SEC. 2525. If a man have by a woman a child or children, and afterward shall intermarry with her, and shall recognize such children to be his, they shall be deemed and considered as legitimate.

SEC. 2526. The issue of all marriages deemed null in law, or dissolved by divorce, shall be deemed and considered as legitimate.

SEC. 2527. In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate is, or has been, an alien.

SEC. 2528. If there be no children, or their descendants, father, mother, nor their descendants, or any paternal or maternal kindred capable of inheriting, the whole shall go to the wife or husband of the intestate. If there be no such wife or husband, then the estate shall go to the state.

SEC. 2529. If any of the children of an intestate be living, and some be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as shall have died, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who shall have died leaving issue had been living, so that the descendants of each child who shall be dead shall inherit the same their parent would have received if living.

SEC. 2530. The rule of descent prescribed in the last preceding section shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, shall be in equal degree of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them had all the descendants in the same degree who shall have died leaving issue been living, so that the issue of the descendants who shall have died shall respectively take the shares which their parents, if living, would have received.

SEC. 2531. In cases where the intestate shall die without descendants, if the estate come by the father, then it shall ascend to the father and his heirs; if by the mother, the estate, or so much thereof as came by the mother, shall ascend to the mother and her heirs; but if the estate be a new acquisition it shall ascend to the father for his life-time, and then descend, in remainder, to the collateral kindred of the intestate in the manner provided in this act; and,

(c) See *Gregley v. Jackson*, 38—487.

in default of a father, then to the mother, for her life-time; then to descend to the collateral heirs as before provided (d).

SEC. 2532. The estate of an intestate, in default of a father and mother, shall go, first, to the brothers and sisters, and their descendants, of the father; next, to the brothers and sisters, and their descendants, of the mother. This provision applies only where there are no kindred, either lineal or collateral, who stand in a nearer relation.

SEC. 2533. Relations of the half-blood shall inherit equally with those of the whole blood in the same degree; and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance come to the intestate by descent, devise, or gift, of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

SEC. 2534. In all cases not provided for by this act, the inheritance shall descend according to the course of the common law.

SEC. 2535. Whenever an inheritance, or a share of an inheritance, shall descend to several persons, under the provisions of this act, they shall inherit as tenants in common, in proportion to their respective shares or rights.

ADVANCEMENT.

SEC. 2536. If any child of an intestate shall have been advanced by him, in his life-time, by settlement or portion of real or personal estate, or both of them, the value thereof shall be reckoned, for the purpose of this section, only as part of the real and personal estate of such intestate descendible to his heirs, and to be distributed to his next of kin, according to law; and, if such advancement be equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as herein reckoned, then such child and his descendants shall be excluded from any share of the real and personal estate of the intestate.

SEC. 2537. In cases where such advancement is not equal to the share that such child or relative, and his descendants, shall be entitled to receive, they shall be entitled to receive so much of the real and personal estate as shall be sufficient to make all the shares of the heirs in such real and personal estate and advancement to be as nearly equal as possible.

SEC. 2538. The value of any real or personal estate so advanced shall be deemed to be that, if any, which was acknowledged by the person receiving the same by any receipt, in writing, specifying the value; if no such written evidence exists, then such value shall be estimated according to its value at the time of advancing such money or property.

SEC. 2539. The maintaining, educating or giving money to a child or heir, without a view to a portion or settlement in life, shall not be an advancement within the meaning of this act.

CONSTRUCTION.

SEC. 2540. The term "real estate," as used in this act, shall be construed to include every estate, interest and right, legal and equitable, in lands, tene-

(d) See *Galloway v. Robinson*, 19—393; *Magness v. Arnold*, 31—103.

ments and hereditaments, except such as are determined or extinguished by the death of the intestate, seized or possessed thereof in any manner, other than by lease for years and estate for the life of another person.

SEC. 2541. The term "inheritance," as used in this act, shall be understood to mean real estate, as herein defined, descended according to the provisions of this act.

SEC. 2542. Whenever, in any part of this act, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent came; and, when any person is described as having died, it shall be understood that he died before the intestate.

SEC. 2543. The expression used in this act, "where the estate shall have come to the intestate on the part of the father," or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate by gift, devise or descent from the parent referred to, or from any relative of the blood of such parent. *Rev. Stat., chap. 49.*

HEIRS AT LAW MAY BE MADE BY DECLARATION IN WRITING.

SEC. 2544. When any person may desire to make a person his heir at law, it shall be lawful to do so by a declaration in writing in favor of such person, to be acknowledged before any judge, justice of the peace, clerk of any court, or before any court of record in this state.

SEC. 2545. Before said declaration shall be of any force or effect, it shall be recorded in the county where the said declarant may reside, or in the county where the person in whose favor such declaration is made may reside. *Act Jan. 12, 1853.*

CHAPTER L.

DISTRICTS—CONGRESSIONAL.

SECTION

- 2546. State divided into five districts.
- 2547. Counties comprising first district.
- 2548. Counties comprising second district.

SECTION

- 2549. Counties comprising third district.
- 2550. Counties comprising fourth district.
- 2551. Counties comprising fifth district.

SECTION 2546. The State of Arkansas shall be divided into five congressional districts.

SEC. 2547. The first district shall be composed of the Counties of Randolph, Clay, Green, Lawrence, Sharp, Independence, Jackson, Craighead, Mississippi, Poinsett, Cross, Crittenden, St. Francis, Lee, Phillips, Desha and Chicot, and the qualified electors residing therein shall elect one representative to the congress of the United States.

SEC. 2548. The second district shall be composed of the Counties of Dorsey, Lincoln, Grant, Jefferson, Arkansas, Monroe, Prairie, Lonoke, Woodruff, White, Faulkner, Conway, Pope, Van Buren, Stone and Cleburne, and the qualified electors residing therein shall elect one representative to the congress of the United States.

SEC. 2549. The third district shall be composed of the Counties of Polk, Howard, Sevier, Little River, Pike, Hempstead, Miller, Lafayette, Columbia, Nevada, Clark, Hot Spring, Dallas, Ouachita, Calhoun, Union, Bradley, Drew and Ashley, and the qualified electors residing therein shall elect one representative to the congress of the United States.

SEC. 2550. The fourth district shall be composed of the Counties of Crawford, Franklin, Johnson, Sebastian, Logan, Scott, Yell, Perry, Garland, Saline, Pulaski and Montgomery, and the qualified electors residing therein shall elect one representative to the congress of the United States.

SEC. 2551. The fifth district shall be composed of the Counties of Benton, Washington, Madison, Carroll, Boone, Newton, Searcy, Marion, Baxter, Fulton and Izard, and the qualified electors residing therein shall elect one representative to the congress of the United States. *Act March 23, 1883.*

CHAPTER LI.

DISSECTION OF THE DEAD.

SECTION

2552. Dead bodies, when and by whom and to whom surrendered for advancement of anatomical science.

SECTION

2553. Dead bodies, when not to be surrendered.

2554. use of and disposition of remains.

2555. who may lawfully have in possession.

SECTION 2552. Any member of either of the following boards of officers, to wit: the board of health of any city, village or township, the mayor or common council of any city, and the officer or board having direction or control of any alms-house, prison, house of correction or jail, shall, when requested, surrender the dead bodies of such persons as may be required to be buried at the public expense to any regular practicing physician in the state, to be used by him for the advancement of anatomical science.

SEC. 2553. No such dead body shall in any case be surrendered if the deceased person, during his last illness, requested to be buried, or if, within twenty-four hours after his death, any person claiming to be of kindred or a friend to the deceased, and satisfying the proper board of officers thereof, shall require to have the body buried, or if deceased person was a stranger, who died suddenly before making himself known, the dead body shall in all such cases be buried.

SEC. 2554. It shall not be lawful for any person so receiving a dead body to use the same except for the prosecution of anatomical science, and, after having been used, the remains thereof shall be decently buried.

SEC. 2555. Any regular practicing physician or surgeon of this state, or any medical student, under the authority of such physician or surgeon, may have in his possession human dead bodies, or parts thereof, lawfully obtained, for the purpose of anatomical inquiry or dissection. *Act April 14, 1873.*

CHAPTER LII.

DIVORCE.

SECTION

2556. Circuit court has jurisdiction to grant divorces; grounds for.
 2557. Legitimacy of children not to be affected by.
 2558. Proceedings, where to be had; how process may be directed.
 2559. To be prosecuted by equitable proceedings.
 2560. Pleadings not to be verified; interrogatories may be filed.
 2561. Statement of complaint not to be taken as true.
 2562. What plaintiff must allege and prove.
 2563. Maintenance and attorneys' fees *pendente lite*.

SECTION

2564. Collusion of parties and condonation of offenses.
 2565. Alimony and care of children.
 2566. Power of court to enforce decree.
 2567. Court may order decree for alimony and maintenance.
 2568. Order in respect to the property of each party on final decree.
 2569. A woman may be restored to her maiden name.
 2570. Proceedings for annulling judgment of divorce.

SECTION 2556. The circuit court shall have power to dissolve and set aside a marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes:

First. Where either party, at the time of the contract, was and still is impotent.

Second. Where either party willfully deserts and absents himself or herself from the other for the space of one year without reasonable cause.

Third. Where he or she had a former wife or husband living at the time of the marriage sought to be set aside.

Fourth. Where either party shall be convicted of felony or other infamous crime.

Fifth. Where either party shall be addicted to habitual drunkenness for the space of one year (a), or shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, or shall offer such indignities to the person of the other as shall render his or her condition intolerable (b).

Sixth. Where either party shall have committed adultery subsequent to such marriage (†).

Seventh. Where either party shall, subsequent to such marriage, have become permanently or incurably insane. *Civil Code, sec. 464, as amended 1873.*

SEC. 2557. The injured party may apply for such decree of divorce, but no divorce shall affect the legitimacy of the children born previously to entering the decree in such case. *Rev. Stat., chap. 51, sec. 2.*

SEC. 2558. The proceedings shall be in the county where the complainant resides, and the process may be directed in the first instance to any county in the state where the defendant may then reside. *Ib., sec. 5.*

SEC. 2559. The action for alimony or divorce shall be by equitable proceedings.

SEC. 2560. The pleadings are not required to be verified by affidavit; but either party may file interrogatories to the other in regard to any matter of

(a) See *Brown v. Brown*, 38—324.

(b) See *Rose v. Rose*, 9—507; *Honnett v. Honnett*, 33—156; *Kurtz v. Kurtz*, 38—119; *Brown v. Brown*, 38—324.

(†) Where the charge is adultery, courts are reluctant to grant a divorce upon the uncorroborated testimony of a *particeps criminis*. *Payne v. Payne*, 42—235. As to testimony of the parties, see note (c) to SEC. 2559.

property involved in the action, which shall be answered on oath, as interrogatories in other actions (c), and have the same effect.

SEC. 2561. The statements of the complaint for a divorce shall not be taken as true because of the defendant's failure to answer, or his or her admission of their truth (d).

SEC. 2562. The plaintiff, to obtain a divorce, must allege and prove, in addition to a legal cause of divorce:

First. A residence in the state for one year next before the commencement of the action.

Second. That the cause of divorce occurred or existed in this state, or, if out of the state, either that it was a legal cause of divorce in the state where it occurred or existed or that the plaintiff's residence was then in this state.

Third. That the cause of divorce occurred or existed within five years next before the commencement of the suit.

SEC. 2563. During the pendency of an action for divorce or alimony, the court may allow the wife maintenance and a reasonable fee for her attorneys, and enforce the payment of the same by orders and executions and proceedings as in cases of contempt (e). *Civil Code, secs. 456-460.*

SEC. 2564. If it shall appear to the court that the adultery, or other offense complained of, shall have been occasioned by the collusion of the parties, or done with an intent to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of the adultery, or such other offense or injury complained of in the bill, then no divorce shall be granted or decreed (f).

SEC. 2565. When a decree shall be entered, the court shall make such order touching the alimony of the wife and care of the children, if there be any, as from the circumstances of the parties and the nature of the case shall be reasonable (g).

SEC. 2566. The court may enforce the performance of any decree or order for alimony and maintenance by sequestration of the defendant's property, or that of his securities, or by such other lawful ways and means as are according to the rules and practice of the court.

SEC. 2567. The court, upon application of either party, may make such alterations from time to time, as to the allowance of alimony and maintenance, as may be proper, and may order any reasonable sum to be paid for the support of the wife during the pending of her bill for a divorce (h). *Rev. Stat., chap. 51, secs. 8, 9, 11, 12.*

SEC. 2568. In every final judgment for divorce from the bond of matrimony, an order shall be made that each party be restored to all property not disposed of at the commencement of the action which either party obtained from or through the other during the marriage, and in consideration or by reason thereof. The proceedings for enforcing this order may be by petition

(c) For interrogatories in other actions, see SECS. 5069-5101.

(d) See *Rie v. Rie*, 34-37.

(e) See *Hecht v. Hecht*, 28-92; *Countz v. Countz*, 30-73; *Casteel v. Casteel*, 38-477; *Kurtz v. Kurtz*, 38-119.

(f) See *Turnbull v. Turnbull*, 23-615.

(g) Alimony being an incident to divorce, the courts of this state can only grant it in connection with the decree of divorce, and have no jurisdiction to entertain an application for alimony where the decree has been granted by another tribunal. *Bourman v. Worthington*, 24-522.

Where a divorced wife marries again, she has no right to alimony or support from the first husband, either during life or after the death of the second husband. *Ib.*

(h) See *Bauman v. Bauman*, 18-320; *Holt v. Holt*, 42-495.

of either party, specifying the property the other has failed to restore, upon which the court may proceed to hear and determine the same in a summary manner after ten days' notice to the opposite party.

SEC. 2569. When a divorce is granted to a married woman, the court may restore her to the name she bore previous to the marriage from which she has been divorced when the complaint contains a prayer for that relief.

SEC. 2570. The proceedings for annulling a final judgment for a divorce from the bond of matrimony shall be a joint petition of the parties, verified by both parties in person, filed in the court rendering the judgment, upon which the court may forthwith annul the divorce. *Civil Code, secs. 461-463.*

CHAPTER LIII.

DOWER.

SECTION

- 2571. Widow's dower in lands.
- 2572. Widow of an alien to have the same dower as if her husband had been a native-born citizen.
- 2573. Dower in case of exchange of lands.
- 2574. Mortgage of husband not to affect widow's dower.
- 2575. Otherwise where mortgage given for purchase money.
- 2576. Widow's rights in surplus after discharging mortgage for purchase money.
- 2577. Widow, no dower in lands held by her husband as mortgagee.
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- 2579. Conveyance or provision in lieu of dower.
- 2580. How assent of wife given in such case.
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- 2582, 2583, 2584. Cases in which she may elect to accept provision or take dower.
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- 2589, 2590. Duty of commissioners appointed to lay off dower.
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- 2593. Widow's dower, at her death, descends, how.
- 2594. Devise of real estate to the wife by the husband shall be deemed in lieu of dower.
- 2595, 2596, 2597, 2598. Widow has her election in such cases; proceedings.
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- 2600. Relinquishment, how made, when and where to be filed.
- 2601. Laws vesting certain estates in widow and children not repealed.
- 2602. Widow shall be endowed in all the lands sold in the life-time of the husband without her consent.
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- 2614. Proceedings on report.
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- 2616. Widow may recover and defend possession of her dower.
- 2617. Heir's alienation of land not to affect widow's dower.
- 2618. Of the crop growing on the land assigned as dower at widow's death.
- 2619. Costs to be apportioned, etc.

SECTION 2571. A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance (a) at any time

(a) It need not be a legal title. *Kirby v. Vantrece*, 26—368. See *Tate v. Jay*, 31—576.

during the marriage, unless the same shall have been relinquished in legal form (b).

SEC. 2572. The widow of an alien shall be entitled to dower of the estate of her husband in the same manner as if such alien had been a native-born citizen of this state.

SEC. 2573. If a husband seized of an estate of inheritance in lands exchange it for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

SEC. 2574. Where a person seized of an estate of inheritance in land shall have executed a mortgage of such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged as against every person, except the mortgagee and those claiming under him.

SEC. 2575. Where a husband shall purchase lands during coverture, and shall mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower as against all other persons (c).

SEC. 2576. When, in such case, the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of the decree of a court of chancery, and any surplus shall remain after the payment of the moneys due on such mortgage and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus for her life as her dower.

SEC. 2577. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he have acquired an absolute estate therein during the marriage.

SEC. 2578. In case of divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

(b) While dower remains unascertained, and until there has been an actual admeasurement by metes and bounds, it is a mere potential interest, amounting to nothing more than a chose in action, and is not subject to seizure and sale by execution at law. *Pennington v. Yell*, 11—212. The probate court can not order a sale of any part of the lands free of dower. *Webb v. Smith*, 40—17. An infant married woman can not release dower. *Watson v. Billings*, 38—278. As to right of widow in husband's improvements on swamp lands, see *Miller v. Gibbons*, 34—212. A widow's dower is not cut off by a probate sale for the payment of debts. *Livingston v. Cochran*, 33—296. There is no dower in lands held in joint tenancy. *Cockrill v. Armstrong*, 31—580. If a trustee has an interest in the trust estate, the wife is entitled to dower if it can be assigned without prejudice to the trust estate. *Ib.* A woman can not relinquish dower in favor of her husband. *Pillow v. Wade*, 31—678; *Countz v. Marking*, 30—17. The widow is not entitled to dower in partnership property. *Dreary v. Montgomery*, 28—256. The widow is not entitled to dower in the proceeds of lands sold by an administrator, but in the specific lands. *Tiner v. Christian*, 27—306. The right to dower is governed by the law of the place where the lands are situated. *Apperson v. Bolton*, 29—418. Where the value of a widow's dower in all of her husband's lots is set apart to her in part of them, she has no claim to dower out of the remainder. *Rockyfell v. Pray*, 40—69.

The widow of a deceased mortgagor is not barred of dower in the mortgaged lands by a decree of foreclosure, though she was a party to the suit, unless her right to dower was put in issue. *McWhirter v. Roberts*, 40—283.

The forfeiture of land for taxes and the sale by the state after the time for redemption expires extinguishes the widow's right to dower. *Ib.*

(c) The widow is not entitled to dower in lands purchased during coverture as against the vendor proceeding for the purchase money. *Birnie v. Main*, 29—591.

SEC. 2579. When an estate in land shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of erecting a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim for dower of such wife in any land of the husband.

SEC. 2580. The assent of the wife to such jointure shall be evinced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

SEC. 2581. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to by such wife, as above provided, be a bar to any right or claim of dower of such wife in all the lands of her husband.

SEC. 2582. If before her marriage, but without her assent, or if, after her marriage, land shall be given or assured for the jointure of a wife, or a pecuniary provision be made for her in lieu of dower, she shall make her election whether she will take such jointure or pecuniary provision, or whether she will be endowed of the land of her husband, but she shall not be entitled to both.

SEC. 2583. If land be devised to a woman, or a pecuniary or other provision be made for her by will in lieu of her dower, she shall make her election whether she will take the land so devised or the provision so made, or whether she will be endowed of the lands of her husband.

SEC. 2584. When a woman shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure, devise or pecuniary provision, unless within one year after the death of her husband she shall enter on the lands to be assigned to her for her dower, or commence proceedings for the recovery or assignment thereof.

SEC. 2585. Every jointure, devise and pecuniary provision, in lieu of dower, shall be forfeited by the woman for whose benefit it shall be made, in the same cases in which she would forfeit her dower; and, upon such forfeiture, any estate so conveyed for jointure, and every pecuniary provision so made, shall immediately vest in the person, or his legal representatives, in whom they would have vested, on the determination of her interest therein, by the death of such woman.

SEC. 2586. No act, deed or conveyance, executed or performed by the husband without the assent of his wife, evinced by the acknowledgment thereof in the manner required by law, shall pass the estate of a married woman; and no judgment or decree confessed or recovered against him, and no laches, default, covin or crime of the husband shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

SEC. 2587. A widow may tarry in the mansion or chief dwelling-house of her husband for two months after his death, whether her dower be sooner assigned her or not, without being liable to any rent for the same; and, in the meantime, she shall have a reasonable sustenance out of the estate of her husband (d).

(d) See art. IX, sec. 6, Const.

SEC. 2588. If the dower of any widow is not assigned and laid off to her within two months after the death of her husband, she shall remain and possess the mansion or chief dwelling-house of her late husband, together with the farm thereto attached, free of all rent, until her dower shall be laid off and assigned to her (e).

SEC. 2589. In all assignments of dower to any widow, it shall be the duty of the commissioners who may be appointed to lay off the dower (if the estate will permit without essential injury) so to lay off the dower in the lands of the deceased husband that the usual dwelling of the husband and family shall be included in such assignment of dower to the widow. *Rev. Stat., chap. 52, secs. 1-19.*

SEC. 2590. The commissioners appointed to lay off dower in the lands of the deceased husband shall, at the request of the widow to be endowed, lay off the same on any part of the lands of the deceased, whether the same shall include the usual dwelling of the husband and family or not; *provided*, the same can be done without essential injury to such estate. *Act Jan. 15, 1857.*

SEC. 2591. A widow shall be entitled, as part of her dower, absolutely and in her own right, to one-third part of the personal estate, including cash on hand, bonds, bills, notes, book accounts and evidences of debt whereof the husband died seized or possessed (f). *Rev. Stat., chap. 52, sec. 20; act Feb. 21, 1859, sec. 1, and act March 8, 1867.*

SEC. 2592. If a husband die, leaving a widow and no children, such widow shall be endowed of one-half of the real estate of which such husband died seized (g), and one-half of the personal estate, absolutely and in her own right.

SEC. 2593. At the death of any widow who hath dower in land, such property shall descend in accordance with the will of the deceased husband, or, if the husband died intestate, then to descend in accordance with the law for the distribution of intestate's estate.

SEC. 2594. If any husband shall devise and bequeath to his wife any

(e) The widow is entitled to continue in possession of the mansion-house until her dower is assigned, though she be the administratrix and the heir a minor. *Trimble v. James*, 40-393. She is entitled to rents until dower is assigned, although she is the administratrix. *Mock v. Pleasants*, 34-63.

(f) Prior to the passage of the act of February 21, 1859, it had been held that a widow was not entitled to dower in the choses in action of her deceased husband. See *Hill v. Mitchell*, 5-608; *Mulholland v. Thompson*, 13-232.

The widow has dower for life of one-third of the real estate owned by her husband at any time during coverture, whether unsold at his death, or sold or alienated by him without her consent in legal form, and one-third of all personal estate owned by him at his death, including money or cash on hand and choses in action, absolutely, unless he leaves no children, in which case her interest is one-half of each, instead of one-third. And this dower in each she takes by way of lien, created by and at the time of marriage, and paramount to creditors and purchasers, and without any regard to his debts. Her dower in each is carved out of the specific estate of which he was possessed; and, if she has been deprived of it, she can follow it wherever it may be found, and subject it to her lien, unless, by her own laches, she has abandoned or waived the right. *Hill v. Mitchell*, 5-608.

She is entitled to one-third of the estate absolutely, and the administrator holds it as a trustee for her; and, if he sells it, she is entitled to the proceeds of one-third of the sale. She is entitled to one-third of the rents of land, and may hold the mansion and farm attached until her dower is assigned. *Meniffee v. Meniffee*, 8-9. See SECS. 62, 63.

The placing of an execution in the hands of the sheriff in the life-time of the husband does not cut off the widow's right of dower in his goods, unless the officer proceed to make a levy before his death. *James v. Marcus*, 18-421.

The husband can dispose of personalty free of the wife's dower, by sale or mortgage. *McClure v. Owens*, 32-443; *Street v. Saunders*, 27-554. The right to dower in personalty is governed by the law of the intestate's domicile. *Gibson v. Dowell*, 42-164.

(g) Where a husband dies, leaving a widow and no children, the widow is entitled to be endowed of one-half of the real estate during her natural life only. *Brown v. Collins, ad.*, 14-421.

portion of his real estate of which he died seized, it shall be deemed and taken, in lieu of dower, out of the estate of such deceased husband, unless such testator shall, in his will, declare otherwise (h).

SEC. 2595. In cases of provision made by will for widows, in lieu of dower, such widow shall have her election to accept the same or be endowed of the lands and personal property of which her husband died seized.

SEC. 2596. If a widow, for whom provision has been made by will, elect to be endowed of the lands and personal property of which her husband died seized, she shall convey, by deed of release and quit-claim, to the heirs of such estate the land so to her devised and bequeathed, which deed shall be acknowledged or proven and recorded as other deeds for real estate are required to be acknowledged or proven and recorded.

SEC. 2597. Such renunciation of the devise or bequest by deed, as provided for in the last preceding section, shall be deemed a sufficient notice of the renunciation of the interest of such widow in all the benefits she might claim by such will in the lands of such deceased husband.

SEC. 2598. Such renunciation by deed shall be executed within eighteen months after the death of such husband, or the widow will be deemed to have elected to take the devise and bequest contained in such will. *Rev. Stat., chap. 52, secs. 21-27.*

SEC. 2599. The widow of any deceased person, who shall file in the office of the clerk of the court of probate, or with the probate court of the proper county, a relinquishment of her right of dower in and out of the estate of her deceased husband, shall be entitled to receive of the estate of which her said husband died seized and possessed, whether real, personal or mixed, a portion or share thereof, absolutely in her own right, equal to that of a child, which shall be set aside and delivered to her as now provided by law for dower.

SEC. 2600. Said relinquishment shall be in writing and acknowledged before the clerk or some justice of the peace, and filed within sixty days after the grant of letters of administration on the estate of the decedent.

SEC. 2601. Nothing herein contained shall be so construed as to repeal any law vesting estates worth less than three hundred dollars in the widow and children of deceased persons. *Act Nov. 29, 1862 (*)*.

SEC. 2602. A widow shall be endowed of lands sold in the life-time of the husband without her consent in legal form against all creditors of the estate (i).

SEC. 2603. It shall be the duty of the heir at law of any estate, of which the widow is entitled to dower, to lay off and assign such dower as soon as practicable after the death of the husband of such widow (j).

(h) Where a testator makes a provision for his wife and then disposes of the rest of his estate, the provision will be taken in lieu of dower. *Apperson v. Bolton*, 29—418.

(*) The acts of 1862 were not published.

(i) See *Tate v. Jay*, 31—576.

(j) The administrator is entitled to the residue of the estate of the intestate, real and personal, after assignment of dower, for the payment of debts, and is, therefore, entitled to receive the rents. The inheritance is cast upon the heir, and it is his duty to assign the widow's dower: but, until the debts are paid, the administrator is entitled to possession. *Hill v. Mitchell*, 5—608, and *Morrill v. Meniffee*, *Ib.*, 629, overruled so far as they contravene this principle. *Meniffee v. Meniffee*, 8—9. Dower in lands is assigned by the heirs and in the personal property by the administrator. *Hill v. Mitchell*, *supra*.

Though the heir is a minor, the widow is still entitled to remain in possession until the dower is assigned. *Trimble v. James*, 40—393. The widow can not dispose of her dower interest until it has been assigned. *Jacks v. Dyer*, 31—334. But she can, before assignment, release to the person holding the legal title. *Reed v. Ash*, 30—775.

SEC. 2604. If such dower assigned by the heir at law be accepted by the widow, the heir at law shall make a statement of such assignment, specifying what lands have been assigned, and the acceptance of such widow shall be indorsed thereon; which statements and specification of dower, and acceptance thereof, shall be proved or acknowledged by both parties, and filed with and recorded by the clerk of the court of probate, which will then be a sufficient assignment of dower, and shall bar any further demand for dower in the property specified in the statement of dower.

SEC. 2605. If the heir to any estate be a minor, he shall act, in the assignment of dower, by his guardian. *Rev. Stat., chap. 52, secs. 28-31.*

PROCEEDINGS FOR ASSIGNMENT OF DOWER.

SEC. 2606. If dower be not assigned to the widow within one year after the death of her husband, or within three months after demand made therefor, she may file in the court of probate, or in the clerk's office thereof, in vacation, a written petition in which a description of the lands in which she claims dower, the names of those having an interest therein and the amount of such interest shall be briefly stated in ordinary language, with a prayer for the allotment of dower; and, thereupon, all persons interested in the property shall be summoned to appear and answer the petition on the first day of the next term of the court (k). *Rev. Stat., chap. 52, sec. 32; Civil Code, sec. 538.*

SEC. 2607. Upon a summons being served upon all who have an interest in the property ten days before the commencement of the term, the court may make an order for the allotment of dower in accordance with the law of dower. *Rev. Stat., chap. 52, sec. 39; Civil Code, sec. 539.*

SEC. 2608. Parties interested may be constructively summoned as provided by law in other cases.

SEC. 2609. No verification shall be required to the petition or answer.

SEC. 2610. If the petition is filed against infants, married women or persons of unsound mind, the guardian, committee or husband may appear and defend for them and protect their interests; and, if they do not, the court shall appoint some discreet person for that purpose. *Civil Code, secs. 540, 543 and 548.*

SEC. 2611. If any person summoned, as provided in sections 2606 and 2607, desires to contest the right of the petitioner, or the statements in the petition, he shall do so by a written answer, and the questions of law and fact thereupon arising shall be tried and determined by the court upon the petition, answer, exhibits and other testimony. *Rev. Stat., chap. 52, sec. 37; Civil Code, sec. 541.*

SEC. 2612. The court shall, in all cases, when it orders and decrees dower to any widow, appoint three commissioners, of the vicinity, who shall proceed to the premises in question, and, by survey and measurement, lay off and designate, by proper metes and bounds, the dower of such widow in accordance with the decree of the court.

SEC. 2613. Such commissioners shall make a detailed report of their proceedings to the next term of the court. *Rev. Stat., chap. 52, secs. 40, 41.*

(k) The claim for dower is not barred by limitation so long as the heirs continue in possession. *McWhirter v. Roberts*, 40—283; *Livingstone v. Cochran*, 33—296. The statute of limitations runs in favor of a stranger from the date of the husband's death. *Stidham v. Mathews*, 29—650.

SEC. 2614. Upon such report being returned the court may confirm or set the same aside, or remand it to the commissioners for correction. If approved by the court, said report shall be entered of record and be conclusive on the parties. *Rev. Stat., chap. 52, sec. 41; Civil Code, sec. 545.*

SEC. 2615. In cases where lands or tenements will not admit of division, the court, being satisfied of that fact, or on the report of the commissioners to that effect, shall order that such tenements or lands be rented out, and that one-third part of the proceeds be paid to such widow, in lieu of her dower in such lands and tenements. *Rev. Stat., chap. 52, sec. 42.*

SEC. 2616. If the land assigned and laid off to any widow be deforced from her possession, she shall have her action for the recovery of possession thereof, with double damages for such deforcement; or she may sue for the damages alone, and recover double the actual damages sustained, from time to time, until she be put in possession of her dower, held by such deforcer or detainer.

SEC. 2617. If the heir alien lands of which a widow is entitled to dower, she shall still be decreed her dower in such lands so aliened, in whose hand soever the land may be.

SEC. 2618. A widow may bequeath the crop in the ground of the land held by her in dower at the time of her death. If she die intestate, it shall go to her administrator. *Rev. Stat., chap. 52, secs. 21-32, 46-49.*

SEC. 2619. The costs of allotting dower shall be apportioned among the parties in the ratio of their interests, and the costs arising from any contest of fact or law shall be paid by the party adjudged to be in the wrong. *Civil Code, sec. 547.*

CHAPTER LIV.

DROVERS.

SECTION

2620. Required to mark or brand stock.

2621. Mark or brand to be recorded, when, where.

SECTION

2622. Other stock to be turned out of drove.

2223. Writ of detention, what and when issued.

SECTION 2620. All persons driving horses, mules, asses, cattle, sheep, hogs or other stock through this state are required to have a mark or brand with which they shall uniformly mark or brand their stock on some conspicuous part of the animal.

SEC. 2621. Said persons shall, on entering the state, apply to the clerk of the county court of the county first entered, and there record their mark or brand, and said clerk shall, upon the oath of one or more credible witnesses, who shall be citizens of the county, to the effect that the first section of this chapter has been complied with, give them a certificate, bearing the seal of the county, attested by the clerk, which certificate must show that the parties have complied with the requirements of this chapter. A failure to comply with this section shall subject the parties to have their drove detained until they procure the necessary certificate.

SEC. 2622. If, in passing through any county in this state, any horses, asses, cattle, sheep, hogs or other stock should fall in with or attempt to follow any drove, it shall be the duty of the drover to turn them out or keep them from following, and in no case shall he mark, brand, kill or in any way injure them.

SEC. 2623. If complaint shall be made under oath to any justice of the peace that any drover has violated the preceding section, he shall issue a writ, to be called a writ of detention, to cause the detention of the drove or other property of the drover, and have the stock examined. Said writ may be in the following form:

STATE OF ARKANSAS, }
COUNTY OF ———. }

The State of Arkansas to the sheriff or any constable of ——— county:

Whereas, complaint has been made to me in writing, and under oath, by ———, that ———, a drover (here set forth the cause of complaint). You are, therefore, hereby commanded to summon the aforesaid ——— to appear before me, at my office in said township, on ——— day of ———, to answer said complaint; and you are hereby commanded to take into possession and detain the drove of cattle (or horses) of the said ——— until otherwise directed by the undersigned.

Herein fail not, and make due return of this writ on the ——— day of ———, A. D. 18—.

———, J. P.

The complainant, or any other party, may recover his property as in any other case, in which event the drover shall pay all costs accruing under this section (a). *Act July 16, 1868.*

(a) For penalty for violation of the provisions of this chapter, see SEC. 1702.

CHAPTER LV.

EJECTMENT.

SECTION

2624. Action for recovery of real property to be brought in the names of the real parties in interest.

2625. May be brought against the person in possession, or his lessor, or both.

2626. Who may be made co-defendant.

2627, 2628, 2629, 2630, 2631. In what cases action may be maintained.

PLEADINGS AND EVIDENCE.

2632. Evidences of title to be exhibited.

2633. Exceptions to documentary evidence.

2634. What objections waived.

2635. What sufficient to entitle plaintiff to recover.

2636. What must be shown when action brought against joint tenant, etc.

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2637. What damages recoverable.

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2638. Verdict and judgment where plaintiff's right of possession has expired.

2639, 2640, 2641, 2642. Judgment in other cases.

2643. When action of trespass may be maintained.

2644. When plaintiff to pay for improvements.

2645. Value of to be assessed by court or jury.

2646. Account for mesne profits, when not allowed.

2647. Rents accruing after judgment, when allowed as set-off.

2648. Mesne profits due, etc., not to be recovered after one year, etc.

PROCEEDINGS WHERE LAND IS HELD BY TAX TITLE, ETC.

2649, 2650. Conditions precedent to the right of a party to maintain an action for recovery of land sold for taxes, etc.

2651. Judgment and proceedings in such cases where plaintiff recovers.

SECTION 2624. An action for the recovery of real property shall be brought and prosecuted in the real names of the parties thereto (a).

SEC. 2625. It may be brought against the person in possession of the premises claimed, or his lessor, or both (b).

SEC. 2626. The person from or through whom the defendant claims title to the premises may, on his motion, be made a co-defendant.

SEC. 2627. Such action may be maintained in all cases where the plaintiff is legally entitled to the possession of the premises (†).

SEC. 2628. It may also be maintained in all cases where the plaintiff claims the possession of the premises, under or by virtue of:

First. An entry made with the register and receiver of the proper land office of the United States.

Second. A pre-emption right under the laws of the United States.

Third. Where an improvement has been made by him on any of the public lands of the United States, whether the lands have been surveyed or not, and where any person other than those to whom the right of action is given by the preceding clauses of this section is in possession of such improvement (c).

(a) Where the parties to the action are the real parties in interest, and where the lands claimed have to be accurately described, a verdict and judgment is as final and conclusive as in a personal action. *Sturdy v. Jacoway*, 4 Wallace, 174.

(b) In action by mortgagee, representatives of deceased mortgagor need not be made parties. *Simms v. Richardson*, 32—304.

(†) See *Hill v. Plunkett*, 41—465.

(c) The action may be maintained on a homestead certificate of entry. *Brummett v. Pearle*, 36—471; *Gaither v. Lawson*, 31—279. Or other certificate of entry. *Trulock v. Taylor*, 26—54; *Surginer v. Paddock*, 31—528. But not on an equitable title. *Percifull v. Platt*, 36—456. Nor on a title acquired after the commencement of the suit. *Id.* One tenant in common may maintain the action against his co-tenant. *Trapnall v. Hill*, 31—345. Mortgagor can not sue mortgagee until he has paid mortgage debt. *Wells v. Rice*, 34—346. Possession *prima facie* evidence of title. *Ferguson v. Peden*, 33—150; *Jacks v. Dyer*, 31—334. A void patent may be used to give color of title. *Logan v. Jelks*, 34—547. A vendor can not sue where a vendee has tendered purchase money and demanded a deed. *Newsome v. Williams*, 27—632.

SEC. 2629. The executor or administrator of any person who may have made improvements on any of the public lands of the United States, whether he had a right of pre-emption to such improvements or not under the laws of the United States, or whether the lands on which such improvements may have been made have been surveyed or not, may maintain an action for the recovery of such improvement to the same extent and with the same restrictions as provided by the preceding section for their testator or intestate. *Rev. Stat., chap. 53, secs. 1-5.*

SEC. 2630. It may be instituted upon patent certificates issued by the recorder of land titles for Missouri territory upon New Madrid locations, and maintained against defendants not having a better title. *Act Jan. 10, 1853.*

SEC. 2631. It may be maintained in all cases when the plaintiff claims the possession of the premises under or by virtue of an entry made with the proper swamp-land agent or land agent of the proper land office of the State of Arkansas, and the patent certificates granted by any of the aforementioned officers shall be evidence of title in the party to whom it is granted. *Act Jan. 10, 1857.*

PLEADINGS AND EVIDENCE.

SEC. 2632. In all actions for the recovery of lands, except in actions of forcibly entry and unlawful detainer, the plaintiff shall set forth in his complaint all deeds and other written evidences of title on which he relies for the maintenance of his suit, and shall file copies of the same as far as they can be obtained, as exhibits therewith, and shall state such facts as shall show a *prima facie* title in himself to the land in controversy (†), and the defendant in his answer shall plead in the same manner as above required from the plaintiff.

SEC. 2633. The defendant in his answer shall set forth exceptions to any of said documentary evidence relied on by the plaintiff to which he may wish to object, which exceptions shall specifically note the objections taken, and the plaintiff shall in like manner, within three days after the filing of the answer, unless longer time is given by the court, file like exceptions to any documentary evidence exhibited by the defendant, and all such exceptions shall be passed on by the court, and shall be sustained or overruled, as the law may require; and if any exception is sustained to any such evidence the same shall not be used on the trial, unless the defect for which the exception is taken shall be covered by amendment (d).

SEC. 2634. All objections to such evidences not specifically pointed out in the manner provided above shall be waived. *Act March 5, 1875.*

SEC. 2635. To entitle the plaintiff to recover, it shall be sufficient for him to show that, at the time of the commencement of the action, the defendant was in possession of the premises claimed, and that the plaintiff had title thereto, or had the right to the possession thereof.

SEC. 2636. If the action is brought by a joint tenant, or tenant in common, against his co-tenant, the plaintiff shall also be required to show on the

(†) See *Stafford v. Watson*, 41—17; *Shirley v. Cumberhouse*, *Ib.*, 97.

(d) The exhibits are parts of record, though not of the pleadings. *Percifull v. Platt*, 36—456. The exceptions and the rulings of the court on them are parts of the record. *Jacks v. Chaffin*, 34—534. The exhibits need not be copied in the pleadings; only the substance need be stated. *Surginer v. Paddock*, 31—528.

trial that the defendant actually ousted him, or did some act amounting to a total denial of his right as such co-tenant (*).

JUDGMENT—IMPROVEMENTS, ETC.

SEC. 2637. If the plaintiff prevail in the action, he shall recover, by way of damages, the rents and profits down to the time of assessing the same, except where the plaintiff, or those under whom he claims title, may have entered, in any land office of the United States within this state, the improvement of the defendant, and the action is brought to recover the possession of such improvement, in which case the plaintiff shall recover no damages.

SEC. 2638. If the right of the plaintiff to the possession of the premises expires after the commencement of the action, and before the trial, the verdict shall be returned according to the fact, and judgment shall be entered only for the damages and costs.

SEC. 2639. If judgment should be rendered against the defendant, the judgment shall be for the recovery of the premises, and a writ of inquiry shall be awarded to assess the damages (e).

SEC. 2640. When the judgment for the plaintiff is both for the recovery of the possession of the premises and for the damages, the plaintiff may have a writ of possession, which shall command the officer to whom it may be directed to deliver to the plaintiff possession of the premises, and shall also command him to levy and collect the damages and costs, as in executions on judgments in personal actions.

SEC. 2641. Where the judgment for the plaintiff is only for damages and costs, execution may be issued thereon as on judgments in personal actions.

SEC. 2642. In all cases, where no other provision is made, the judgment, if for the plaintiff, shall be for the recovery of the possession of the premises, and the damages and costs.

SEC. 2643. An action of trespass may be maintained in all the cases enumerated in section 2628. *Rev. Stat., chap. 53, secs. 6-19.*

SEC. 2644. If any person, believing himself to be the owner, either in law or equity, under color of title, has peaceably improved, or shall peaceably improve, any land which upon judicial investigation shall be decided to belong to another, the value of the improvement made as aforesaid and the amount of all taxes which may have been paid on said land by such person, and those under whom he claims, shall be paid by the successful party to such occupant, or the person under whom or from whom he entered and holds, before the court rendering judgment in such proceeding shall cause possession to be delivered to such successful party.

SEC. 2645. The court or jury trying such cause shall assess the value of such improvements in the same action in which the title to said lands is adjudicated; and on such trial the damages sustained by the owner of the lands from waste, and such mesne profits as may be allowed by law, shall also be

(*) See *London v. Overby*, 40—155.

(e) Where the jury assess no damages the court can not do so. *Cannon v. Davis*, 33—56. Plaintiff is entitled to mesne profits if he recovers the land. *Jacks v. Dyer*, 31—334. Where judgment is recovered of mere clerk of tenant in possession, it will be enjoined. *Stewart v. Pace*, 30—594.

When part of the plaintiffs are precluded from recovery only by the statute of limitations, the others not barred are entitled to judgment for their proportional part of the land and damages. *Wheeler v. Luid*, 40—108.

assessed, and if the value of the improvements made by the occupant and the taxes paid as aforesaid shall exceed the amount of said damages and mesne profits combined, the court shall enter an order as a part of the final judgment providing that no writ shall issue for the possession of the lands in favor of the successful party until payment has been made to such occupant of the balance due him for such improvements and the taxes paid; and such amount shall be a lien on the said lands, which may be enforced by equitable proceedings at any time within three years after the date of such judgment.

SEC. 2646. In recoveries against such occupants no account for any mesne profits shall be allowed unless the same shall have accrued within three years next before the commencement of the suit in which they may be claimed.

SEC. 2647. In any such equitable proceedings the court may allow to the owner of the lands as a set-off against the value of such improvements and taxes the value of all rents accruing after the date of the judgment in which it has been allowed.

SEC. 2648. Wherever any such mesne profits are now due on lands withheld by such occupants as are described in section 2644, no recovery therefor shall be had unless suit therefor is brought within one year from and after the passage of this act. *Act March 8, 1883.*

PROCEEDINGS WHERE LAND IS HELD BY TAX TITLE, ETC.

SEC. 2649. No person shall maintain an action for the recovery of any lands, or for the possession thereof, against any person who may hold such lands by virtue of a purchase thereof at a sale by the collector, or commissioner of state lands, for the non-payment of taxes, or who may have purchased the same from the state by virtue of any act providing for the sale of lands forfeited to the state for the non-payment of taxes, or who may hold such lands under a donation deed from the state, unless the person so claiming such lands shall, before the issuing of any writ, file in the office of the clerk of the court in which suit is brought an affidavit setting forth that such claimant hath tendered to the person holding such lands in the manner aforesaid, his agent or legal representative, the amount of taxes and costs first paid for said lands, with interest thereon from the date of payment thereof, and the amount of taxes paid thereon by the purchaser subsequent to such sale, with interest thereon, and the value of all improvements made on such lands by the purchaser, his heirs, assigns or tenants, after the expiration of the period allowed for the redemption of lands sold for taxes, and that the same hath been refused.

SEC. 2650. If an action shall be brought in any court of record against any such person, his heirs or assigns, holding any such lands, and it shall appear to the satisfaction of said court that no affidavit, as required in the preceding section, was filed previous to the commencement thereof, it shall be the duty of such court to dismiss said action at the cost of the plaintiff (f).

(f) This statute is not unconstitutional. *Craig v. Flinnagin*, 21—319; *Coots v. Hill*, 41—149. A bill for the redemption of lands sold for taxes, or ejectment therefor, may be dismissed if the affidavit is not first filed. *Ib.* And so in ejectment. *Pope v. Macon*, 23—644; *Spain v. Johnson*, 31—314. The objection may be made either by motion or by answer. *Pope v. Macon*, 23—641. And if not made in the circuit court it is considered as waived. *Spain v. Johnson*, 31—314; *Pettus v. Wallace*, 29—176. The statute does not apply to a suit to enjoin the execution of a tax deed. *Hare v. Carnall*, 39—196. Nor to a case where public lands have been sold for taxes, and they have been afterward entered. *Gaither v. Lawson*, 31—279. Where, in a suit to confirm a tax title, the title is held to be void, the plaintiff is entitled to a decree for taxes, costs, interest and improvements. *Haney v. Cole*, 28—299.

SEC. 2651. If judgment shall be given against any such person, or his assigns, who hold any such lands, in favor of any person claiming the same, no matter by what manner of title, said judgment shall only be for the possession of the premises in question; and damages shall be assessed in favor of said defendant for the amount of all taxes, costs and interest hereinbefore provided for, together with the value of all improvements made thereon after the expiration of the period allowed for the redemption of lands sold for taxes, for which judgment shall be entered in favor of said defendant, and the same shall be a lien upon such lands until satisfied. *Act Jan. 10, 1857, secs. 1-4.*

CHAPTER LVI.

ELECTIONS (a).

SECTION

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2655. Term of judges of election.
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(a) Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name, or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof. *Art. III, sec. 2., Const.*

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GENERAL ELECTION—TIME OF HOLDING.

SECTION 2652. On the first Monday in September, eighteen hundred and seventy-six, and every two years thereafter, there shall be held an election in each precinct and ward in this state for the election of all elective state, county and township officers whose term of office is fixed by the constitution at two years; and state senators in their respective districts when the terms for which senators may have been elected shall expire before the next general election; and for judges of the supreme and circuit courts when the term of office of any judge shall expire before the next general election; and for representatives to the congress of the United States for each congressional district; and for prosecuting attorneys.

SEC. 2653. The county court for each county shall, on or before the first day of August next, revise the formation of election precincts in each county, and at any time thereafter if it shall become necessary; and shall, as far as the public convenience will admit, establish the election districts and wards of a city, town or other municipal subdivisions as the said court may think best, and shall fix a place in each election district in which the election shall be held. *Provided*, that each election district shall be of a size to enable all the voters residing in the same to vote on the same day, as now required by law.

JUDGES AND CLERKS OF ELECTION—APPOINTMENT, ETC.

SEC. 2654. The county court, at its last term held more than thirty days before any general election, shall appoint three discreet persons in each township, having the qualifications of electors, to act as judges of election within the township (b); and the judges so appointed shall select two persons having the like qualifications to act as clerks thereof.

SEC. 2655. The judges of election appointed as aforesaid shall continue to be judges of election within their respective townships until the next general election.

SEC. 2656. If the court shall fail to fix a place at which elections are to be held in any township, or to appoint judges of elections, or those appointed fail to act, it shall be the duty of the sheriff to fix a place for holding the election; and the voters, when assembled, may appoint the judges, who shall, in all respects, perform the duties of judges of election required by law (c).

SEC. 2657. No person hereafter shall be competent to act as judge or clerk of any election authorized to be holden by the laws and constitution of this state who shall have any moneys, goods, wares or merchandise bet on the result of any such election.

SEC. 2658. Any person who shall act in any election as aforesaid, having any moneys, goods, wares or merchandise bet on the result of any such election, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, to be fixed by the judge or jury trying the case.

SHERIFF TO MAKE PROCLAMATION.

SEC. 2659. It shall be the duty of the sheriff of each county, at least twenty days before each general election and ten days before the holding of each special election, to give public notice, by proclamation throughout the county, of the time and several places of holding such elections in his county and the officers to be elected at such time.

(b) See art. III, sec. 10, *Const.*

Disqualification of the officers of an election at a particular polling place will not annul the poll. They are officers *de facto*—their acts as valid as to the public as if officers *de jure*; and their title can not be questioned, collaterally, as in a contested election case. *Svepton v. Barton*, 39—549.

That an officer of an election was himself a candidate voted for, while it might avoid the election as to him, would not affect the other candidates. *Ib.*

(c) When the poll-books are certified by different judges from those appointed by the county court, it will be presumed, in the absence of proof to the contrary, that they were substituted by the voters for the appointed judges in the manner provided by this section, especially where it appears that the judges who certify were sworn and acted. *Patton v. Coates*, 41—111.

SEC. 2660. A copy of such proclamation shall be set up at each of the places fixed for holding such election and two or more of the most public places in each township, and publish the same in a newspaper, if one be published in the county.

OATH OF JUDGES AND CLERKS.

SEC. 2661. The judges, before entering on their duties, shall take, before some person authorized by law to administer oaths, the following oath: "I, ———, do swear that I will perform the duties of judge of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same, and that I will not disclose how any elector shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election" (d).

SEC. 2662. The clerks of elections, before entering on their duties, shall take an oath that they will faithfully record the names of all voters, and that they will not disclose how any elector shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election.

SEC. 2663. In case there shall be no person present at the opening of any election authorized to administer oaths, it shall be lawful for the judges of the election to administer the oaths to each other and to the clerks; and such judges shall have full power and authority to administer all oaths that may be necessary in conducting any election.

SEC. 2664. The person who shall administer the oaths to the judges and clerks of any election shall cause a certificate to be prefixed to the poll-books in words to the following effect: "I do certify that ——— and ———, judges, and ——— and ———, clerks, of the election held in the township of ———, in the county of ———, on the ——— day of ———, in the year one thousand eight hundred and ———, were severally sworn as the law directs previous to entering on their respective duties;" which certificate shall be subscribed by the person administering the oaths, and shall be considered as a part of the record of the election.

POLL-BOOKS—BY WHOM AND WHEN MADE AND DELIVERED.

SEC. 2665. It shall be the duty of the clerk of the county court of each county, at least twenty-five days before each general election and ten days before each special election, to make out and deliver to the sheriff of his county two blank poll-books for each township in his county, properly laid off in columns, with proper captions, and forms of oaths and certificates attached thereto; and such poll-books shall contain a sufficient number of pages to record the names of all the voters in the township.

SEC. 2666. It shall be the duty of the sheriff forthwith to deliver such books to the judges of election within their respective townships.

(d) See art. III, sec. 3, Const.

POLLS—WHEN TO BE OPENED AND CLOSED—DUTIES OF SHERIFF AND JUDGES.

SEC. 2667. The judges of each election shall open the polls at eight o'clock in the morning, and the same shall be closed at sunset of the same day (e).

SEC. 2668. The sheriff of each county shall specially deputize a suitable number of persons in each election district in his county to attend at each election in said district to preserve order, and to do and perform such other things in relation thereto as may be required of them by the judges.

SEC. 2669. The judges of elections shall preserve order and punish any disorderly person for contempt, by fine not exceeding twenty-five dollars, and may commit the offender to jail until the fine so imposed be paid, or he be otherwise discharged according to law.

QUALIFICATIONS OF ELECTORS.

SEC. 2670. When any person shall offer to vote, and when no one of the judges shall be acquainted with the qualifications of such person, the judges may examine him touching his qualifications as an elector, under oath, or they may satisfy themselves in relation thereto by any other testimony. *Act Jan. 23, 1875, secs. 1-6, 7-19.*

SEC. 2671. Every male citizen of the United States, or male person who has declared his intention of becoming a citizen of the same, of the age of twenty-one years, who has resided in the state twelve months, and in the county six months, and in the voting precinct or ward one month, next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people (f).

SEC. 2672. No idiot or insane person shall be entitled to the privileges of an elector.

SEC. 2673. No soldier, sailor or marine, in the military or naval service of the United States, shall acquire a residence by reason of being stationed on duty in this state. *Art. III, secs. 1, 5 and 7, Const.*

SEC. 2674. No one who has been convicted of a felony shall be allowed to vote at any election in this state, unless such person shall have been pardoned by the governor of the state; and the records of the court wherein such person shall have been convicted shall be conclusive evidence of his conviction.

MANNER OF VOTING AND CONDUCTING ELECTIONS.

SEC. 2675. All elections by the people shall be by ballot. Every ballot shall be numbered in the order in which it shall be received, and the number recorded by the election officers, on the list of voters, opposite the name of the elector who presents the ballot (g).

(e) The provision of this section, fixing the time for closing the polls, is directory and not mandatory; and an election should not be set aside and its object defeated for want of strict compliance with this statute where no obstruction or impediment to a fair expression of the will of the people is shown. *Holand v. Davies*, 36—446; *Simpson v. Barton*, 39—549.

(f) The qualifications required of voters by the constitution can not be added to by legislative enactment. *Rison v. Furr*, 24—161.

(g) See *art. III, sec. 3, Const.*

SEC. 2676. It shall be the duty of the county court in each of the counties of this state to provide, at the expense of the county, a good and sufficient ballot-box, with lock and key, for the several townships or places of voting in their respective counties, for the safe-keeping of the ballots that may be given on the day of election held in said township.

SEC. 2677. It shall be the duty of the sheriff in the several counties in this state to deliver to one of the judges of the election in each township the ballot-boxes so provided by the county court of his county.

SEC. 2678. If any sheriff shall fail to deliver or cause to be delivered the ballot-boxes, as provided in the foregoing section, he shall, upon conviction thereof, before any court having competent jurisdiction, be fined in any sum not exceeding ten dollars for each failure.

SEC. 2679. It shall be the duty of the judges of the election, or any one of them, immediately before the proclamation is made of the opening of the polls, to open the ballot-box in the presence of the people there assembled, and turn it upside down, so as to empty it of every thing it may contain, and then lock it; and it shall not be reopened, except for the purpose of counting the ballots therein.

SEC. 2680. It shall be the duty of each and every voter, at any of the elections hereafter to be holden in this state, to have written in a legible hand, or printed, the name or names of the person or persons for whom he votes, and the office which said person or persons is or are voted for to fill, respectively, on his ballot and hand the same to one of the judges of election.

SEC. 2681. The judge to whom any ballot shall be delivered shall, upon receipt thereof, pronounce in an audible voice the name of the elector from whom he receives the ballot, and if no objection be made to him, and the judges be satisfied that he is legally entitled, agreeably to the constitution and laws of the state, to vote at the election, he shall immediately number the ballot, as provided in section 2675, and put the same in the ballot-box without opening or in any way inspecting the names written or printed thereon (h).

SEC. 2682. It shall be the duty of the clerks of election to register the names of each and all electors in the order in which they may present their ballots, placing opposite each name its appropriate number, as required by section 2675. *Act Jan. 23, 1875, secs. 23-27, 29, 31-32.*

COUNTING THE BALLOTS—RETURNS, ETC.

SEC. 2683. At the closing of the polls, the poll-books shall be signed by the judges and attested by the clerks (i), and the names therein shall be counted and the number set down at the foot of the poll-books. After the poll-books are signed, the ballot-box shall be opened, and the ballots therein contained shall be taken out one by one at a time by one of the judges, who shall read distinctly, while the ballot remains in his hands, the name or names contained therein, and then deliver it to the second judge, who shall examine

(h) If the officers of any election shall unlawfully refuse or fail to receive, count or return the vote or ballot of any qualified elector, such vote or ballot shall nevertheless be counted upon the trial of any contest arising out of said election. *Art. III, sec. 11, Const.*

(i) The clerks of the election are not required to certify the poll-books, but only to sign as attesting witnesses to the signatures of the judges, and this may be done by a clerk not serving when the election began. *Patton v. Coates, 41-111.*

the same to see that there is no mistake, and pass it to the third judge, who shall examine and carefully preserve the same. The same method shall be observed in respect to each of the ballots in the ballot-box until the number of ballots taken out of the ballot-box is equal to the names in the poll-books.

SEC. 2684. The clerks of the election shall enter on a list or poll-book, in separate columns, under the name or names of the person or persons voted for, the number of votes given for each person, as read by the judges, and shall also write out on said list or poll-book, in a legible hand, the number of votes given to each person respectively.

SEC. 2685. When two or more ballots are found folded together, it shall be considered as conclusive evidence of their being fraudulent, and neither of them shall be counted.

SEC. 2686. If a ballot shall be found to contain a greater number of names for any one office than the number of persons required to fill said office, it shall be considered fraudulent as to the whole of the names designated to fill said office, but no further.

SEC. 2687. A ballot shall not be considered fraudulent for containing a less number of names than are authorized to be inserted.

SEC. 2688. After the examination of the ballots shall be completed, the number of votes for each person shall be enumerated, under the inspection of the judges, and set down at the foot of the columns in the list or poll-books, and be publicly proclaimed to the people present.

SEC. 2689. The judges shall certify, under their hands, the number of votes given to each person, and the office for which such votes were given, which shall be attested by the clerks.

SEC. 2690. After canvassing the votes as aforesaid, the judges, before they disperse, shall put under cover one of the poll-books, seal the same and direct it to the clerk of the county court (j).

SEC. 2691. And the poll-books, thus sealed and directed, shall be conveyed by one of the judges, to be determined by lot, if they can not otherwise agree, to the clerk of the county court, within three days after the close of the polls; and the other poll-book shall be retained by the judges, free for the inspection of all persons.

SEC. 2692. If any judge of the election, on whom the lot may fall to carry such poll-book to the county clerk, shall neglect or refuse to perform the service according to the provisions of this act, he shall forfeit the sum of two hundred dollars, to be recovered by indictment, or by action of debt, in the name of the state for the use of the proper county (†).

SEC. 2693. If any judge of election in any township, whose duty it may be, should fail to deliver to the clerk of the county court the return and poll-book of said election within three days, as prescribed by law, on the fourth the clerk of said court shall dispatch a messenger to bring up the same; in which case the polls shall not be compared until the seventh day, and all expense incurred by sending the messenger shall be paid by the defaulting judge of election.

(j) The failure or omission of the judges to seal the poll-book before sending it to the clerk will not invalidate it where it has no appearance of having been tampered with. *Patton v. Coates*, 41—111. See also *Govan v. Jackson*, 32—553; *Thomas v. Hinkle*, 35—457.

As to presumption of regularity in favor of returns, see *Howard v. McDiarmid*, 26—100.

(†) See SEC. 1067.

SEC. 2694. It shall be the duty of the judges of elections, in the respective townships throughout this state, after such election shall have been closed, as provided for in the foregoing sections, securely to envelop all ballots which may have been received in accordance with the provisions of this act, under seal, and return the same to the clerk of the proper county, which shall in no event be opened except in case of a contested election (k).

COMPARING RETURNS—MAKING ABSTRACTS, ETC.

SEC. 2695. On the fifth day after the election (except in the case provided for in section 2693), or sooner, if all the returns have been received, the clerk of the county court shall take to his assistance two justices of the peace of the county, if they can be conveniently had, and, if not, then two householders having the qualifications of electors, and shall proceed to open and compare the several election returns which have been made to his office, and make abstracts of the votes given for the several candidates for each office on separate sheets of paper (l).

SEC. 2696. Such abstracts, being signed by the clerk and justices, or householders, or any two of them, shall be deposited in the office of the clerk of the county court, therein to remain.

SEC. 2697. In case the clerk of the county court shall take to his assistance householders, instead of justices of the peace, to open and compare the returns of any election, such householders, before entering on their duties, shall take an oath before the clerk faithfully and impartially to discharge their duties. *Ib.*, secs. 33-48.

SEC. 2698. Each clerk, in comparing the returns of elections, shall do it publicly, in the court-house, or in the place in which the courts are usually held, first giving notice of the same by public proclamation at the door.

SEC. 2699. Informality in the certificate of the judges and clerks at any election held in any township shall not be good cause for rejecting the poll-books of said township.

SEC. 2700. The clerks of the county courts of the several counties of this state, when they shall call in two justices of the peace, or householders, to assist them in comparing the poll-books of the several townships of their respective counties, shall proceed to add and count all the votes for the several persons therein voted for, regardless of any informality whatever (m). *Provided, however*, that should there exist such informality, or any irregularity, in anything on any poll-book sent up from any township, so that the clerk and comparing justices, or householders, should be unable to arrive at the result or the true intention of the voters, then, and in that case, the clerk shall suspend the further comparing of said poll-books for three days and immediately send a notice, to be served by the sheriff, or by a constable, directed to the election judges and clerks of such township on the poll-books of which informality or

(k) See *Govan v. Jackson*, 32-553.

(l) See *Howard v. McDiarmid*, 26-100.

(m) The board of canvassers of an election have no judicial discretion whatever. They are merely for the purpose of a fair and correct computation of the votes, under public surveillance, upon the face of the poll-books presented to them by the clerk. They have no power to reject any poll-book which is certified substantially as required by the statute, regardless of irregularity or informality, if it intelligibly indicate the intention of the voters. *Patton v. Coates*, 41-111; *Howard v. McDiarmid*, 26-100.

irregularity exists, and commanding them to immediately appear at the court-house, and amend anything on their respective poll-books to correspond with the facts, in order that the clerk and comparing justices, or householders, shall be enabled to count and compare said poll-books, and declare for whom the votes were cast.

SEC. 2701. Should any clerk of the county court and the two accompanying justices, or householders, or either of them, under any circumstances, reject or refuse to count the vote on any poll-book of any election held by the people, such rejection or refusal by such clerk or comparing justices, or householders, or either of them, shall be deemed a high misdemeanor, and the person or persons so offending shall be indicted therefor by the grand jury of their county, and on conviction thereof shall be fined in any sum not less than two hundred dollars, nor more than one thousand dollars, and shall be imprisoned in the common jail not to exceed four months (n).

SEC. 2702. Each clerk of the county court shall, within two days after the examination and comparison of the returns of any election, deposit in the nearest post-office on the most direct route to the seat of government certified copies of the abstracts filed in his office of the returns of the election for members of congress, and all executive, legislative and judicial officers, directed to the secretary of state (o), and he shall, at the same time, inclose and direct to the speaker of the house of representatives, at the seat of government, a certified copy of the abstract of votes given for governor, secretary of state, auditor of state, treasurer of state and attorney-general. *Ib.*, *secs.* 49-53.

SEC. 2703. In all senatorial districts composed of two or more counties, clerks of all the counties in the district shall transmit to the clerk of the county court of the county first named in the district, within ten days after such election, a certified copy of the abstract of the senatorial election in each county.

SEC. 2704. The clerk of the county court of the county to which such returns shall be made, after examining the same, shall give the person having the highest number of votes a certificate of his election, under the seal of his office.

SEC. 2705. It shall be the duty of each clerk of the county court to furnish to each person elected a member of the house of representatives in the general assembly from his county a certificate of his election, under his official seal.

SEC. 2706. If there shall be a failure to receive any of the returns of any election at the seat of government for two mails after the same is due, the secretary of state shall dispatch a messenger to the county from which returns have not been received, with directions to bring up such returns or copies thereof.

SEC. 2707. If such failure shall happen by the neglect of the clerk, he shall forfeit to the state the sum of one hundred dollars, together with the expense of such messenger, to be recovered by action of debt before any court having jurisdiction thereof.

(n) See *Howard v. McDiarmid*, 26—100. For other offenses against the right of suffrage, see SECS. 1850-1855.

(o) See SEC. 2515; *Howard v. McDiarmid*, 26—100; *Thomas v. Hinkle*, 35—150.

CANVASS OF VOTES BY SECRETARY OF STATE.

SEC. 2708. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed to make returns of election by the clerks of the county court, or sooner, if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as may have made returns, for each person voted for as member of congress; and the governor shall immediately thereafter issue his proclamation, declaring the person having the highest number of votes to be duly elected to represent this state in the house of representatives of the congress of the United States, and shall grant a certificate thereof, under the seal of the state, to the person so elected.

SEC. 2709. Should any two or more persons have an equal number of votes, and a higher number than any other person, the governor, in such case, shall issue his proclamation, giving notice of such fact, and that an election will be held at the several place of holding elections in the district for such member of congress, in which he shall mention the day on which the election is to be held, and it shall be conducted, and returns thereof made, agreeably to the provisions of this act.

SEC. 2710. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after the time herein allowed to make returns of elections to the clerks of the county court, or sooner, if all the returns shall have been received, to cast up and arrange the votes from the several counties for each person voted for for any legislative, judicial or executive office, except the offices named in section 3, article VI, of the constitution; and such persons as shall have received the highest number of votes for judge of the supreme court, commissioner of state lands, chancellor, clerk of the Pulaski Chancery Court, within the state; judges of the circuit court and prosecuting attorneys, in their respective districts or circuits; judges of the county and probate court, circuit clerk, county clerk, sheriff, coroner, surveyor and assessor, in their respective counties; and justices of the peace, in their respective townships, and all other officers required by law, shall be immediately commissioned by the governor (†).

SEC. 2711. If two or more persons have an equal number of votes for the same office, and a higher number than any other person, the governor, in such case, shall issue a writ of election, directed to the sheriff of the proper county or counties in which such election shall be held, on a day therein named, for the purpose of electing any legislative, judicial or executive officer, except the officers named in section 3, article VI, of the constitution, and constables, where there appears to be a tie vote (‡).

SEC. 2712. It shall be the duty of the secretary of state, on the first day of each regular session of the general assembly, to lay before each house a list of members elected agreeably to the returns in his office.

CANVASS OF VOTES FOR STATE OFFICERS.

SEC. 2713. The speaker of the house of representatives, during the first week of the session after each election for governor, secretary of state, treasurer

(†) See *State v. Johnson*, 17—407.

(‡) See SEC. 585.

of state, auditor of state and attorney-general, shall, in the presence of both houses of the general assembly, open and publish the votes cast and given for each of the respective officers hereinbefore mentioned. The person having the highest number of votes for each of the respective offices shall be declared duly elected thereto; but if two or more shall be equal and highest in votes for the same office, one of them shall be chosen by a joint vote of both houses of the general assembly, and a majority of all the members elected shall be necessary to a choice. The president of the senate and the speaker of the house of representatives shall make and deposit in the office of the secretary of state a certificate declaring what persons have been elected to any offices named. *Ib.*, *secs.* 54-64.

VACANCIES IN OFFICE—ELECTIONS TO FILL.

SEC. 2714. When any vacancy shall happen in the office of member of congress from this state by death, resignation, removal or otherwise, it shall be the duty of the governor, by proclamation, to order the sheriffs of the several counties to order an election to be held, on a certain day to be named in such proclamation, to supply such vacancy, and such election shall be conducted in the same manner, and returns thereof made, as herein prescribed for general elections.

SEC. 2715. Whenever the office of governor shall have become vacant by death, resignation, removal from office or otherwise, provided such vacancy shall not happen within twelve months next before the expiration of the term of office for which the late governor shall have been elected, the president of the senate or speaker of the house of representatives, as the case may be, exercising the powers of governor for the time being, shall immediately cause an election to be held to fill such vacancy, giving, by proclamation, sixty days' previous notice thereof, which election shall be governed by the same rules prescribed for general elections of governor, as far as applicable; the returns shall be made to the secretary of state, and the acting governor, secretary of state and attorney-general shall constitute a board of canvassers, a majority of whom shall compare said returns and declare who is elected; and if there be a contested election the same shall be decided as contests for the office of supreme judge. *Ib.*, *secs.* 65-66.

SEC. 2716. If a vacancy shall occur in either of the offices created by article VII of the constitution, by death, resignation, removal from the state, circuit, county, township, or otherwise, if such vacancy is required by section 50, article VII, of the constitution to be filled by special election (p), except the office of constable, it shall be the duty of the governor to issue a writ of election to fill such vacancy, directed to the sheriff of the proper county or counties, which election shall be holden on a day named in said writ of election, and the person so elected to fill a vacancy shall hold his office for the unexpired term of his predecessor, and until his successor is elected and qualified.

(p) All vacancies occurring in any office provided for in this article shall be filled by special election, save that in case of vacancies occurring in county and township offices six months, and in other offices nine months, before the next general election; such vacancies shall be filled by appointment by the governor. *Art. VII, sec. 50, Const.*

SEC. 2717. All special elections which may be held by virtue of the provisions of sections 2709, 2711, 2714 and 2716, whether in the case of a tie or to fill a vacancy, shall be holden within thirty days from the date of the writ of election, and when such election shall be holden for the purpose of electing a judge of the supreme, chancery, circuit courts, or prosecuting attorney, the governor shall cause a copy of such writ of election to be published in one of the newspapers at the seat of government, and in all the newspapers within the circuit in which such election is to be held. *Ib.*, *secs.* 69-70.

CONTESTED ELECTIONS (q).

SEC. 2718. If the election of any supreme judge or commissioner of state lands be contested, it shall be before the circuit court of Pulaski County. If the election of any circuit judge, prosecuting attorney, chancellor, clerk of the Pulaski Chancery Court, a judge of the county and probate court, be contested, it shall be before the circuit court of the county where the defendant or contestee resides, or the county where the contestant resides and the contestee may be found.

SEC. 2719. All actions to contest the election of supreme judges shall be commenced within one year after the election or commissioning of said judges, and actions for contesting the elections of all other officers herein mentioned within six months after they are elected or commissioned.

SEC. 2720. All actions or proceedings for contests as herein mentioned shall be by complaint filed in the circuit court as other actions at law, in which the contestant shall plainly and fully set forth the grounds upon which the contest is found, and upon the trial of the same he shall be confined to such grounds as are therein mentioned, but may amend the same in such manner and upon such terms as do not prejudice his opponent.

SEC. 2721. If the contestant shall succeed in his action, he shall not only have a judgment of ouster, but for damages, not exceeding the salary and fees of the office during the time he was excluded therefrom, with costs of suit; *provided*, that either party shall have the right to appeal, with or without *superseas*, as in other cases at law. *Ib.*, *secs.* 67-68.

SEC. 2722. When the election of any clerk of the circuit court, sheriff, coroner, county surveyor, county treasurer, county assessor, justice of the peace, constable, or any other county or township officer, the contest of which is not otherwise provided for, shall be contested, it shall be before the county court, and the person contesting any such election shall give the opposite party notice (r) in writing ten days before the term of the court at which such election shall be contested, specifying the grounds on which he intends to rely, and if any objections be made to the qualifications of voters, the names of such voters, with the objections, shall be stated in the notice, and the parties shall be allowed process for witnesses.

SEC. 2723. Either party may, on giving notice thereof to the other, take

(q) In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony on the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony. *Art. III. sec. 9, Const.*

(r) The notice of contest is the foundation of the action, and performs the double office of a writ and declaration. *Scepton v. Barton*, 39-549; *Vance v. Gaylor*, 25-32.

depositions to be read in evidence on the trial, and the court shall, at the first term (if fifteen days shall have elapsed after such election, and if less than fifteen, then at the second term) in a summary way, determine the same according to evidence (s).

SEC. 2724. If the court shall be of the opinion that the person proclaimed elected is not duly elected, and the person contesting is elected, an order shall be entered up to that effect, and a copy thereof shall forthwith be transmitted to the governor, who shall commission the person declared duly elected by such order.

SEC. 2725. If the person proclaimed duly elected shall have been commissioned previous to making the order annulling his election, it shall be the duty of the governor to cause such person to be notified that his commission is revoked (t).

SEC. 2726. Nothing in this act shall be construed so as to make void any act of the person so commissioned that would otherwise have been lawful. *Ib.*, *secs.* 71-75.

CONTESTANT TO GIVE BOND FOR COSTS.

SEC. 2727. In all suits brought in any of the circuit courts, or in any of the county courts in this state, to contest the election of any state, district, circuit, county or township officer, the contestant shall be required to enter into a bond, with good and sufficient security, to be approved by the clerk of the court in which such suit shall be brought, conditioned that the contestant and his securities will pay to the contestee or defendant in the action and the officers of court such sum of money as shall be adjudged against him in the court in which the suit shall be brought or in any other court to which it shall be carried by appeal or otherwise.

SEC. 2728. The contestant in such suits as are contemplated in the preceding section shall not proceed with his case in any manner, save filing his complaint, or take any testimony in his case until he shall have filed in the clerk's office and obtained the approval of such a bond as is contemplated in said section.

SEC. 2729. If, upon the trial of any such suit as is mentioned in section 2727, judgment shall be rendered against the contestant, judgment shall immediately be rendered against him and his securities in the bond for costs in favor of the contestee or defendant in the action and the officers of court for the amount due them as costs in the case. *Act Feb. 24, 1879, secs. 1-2 and 4.*

(s) Neither party has the right to demand a jury, either in the county court or in the circuit court, on appeal. *Govan v. Jackson*, 32-553; *Wise v. Martin*, 36-305.

The real inquiry upon a contest is whether the contestant or the respondent received the highest number of legal votes, and it is not confined to the ground specified in the notice of contest. The respondent may, without any cross contest, which is not contemplated by the statute, call in question the validity of the votes cast for the contestant, either in the township specified in the notice, or any other township in the county. *Govan v. Jackson*, *supra*; *Serpston v. Barton*, 39-549. The ineligibility of a party elected to office does not render the votes cast for him illegal, nor give the election to his competitor next highest in the poll. *Serpston v. Barton*, *supra*. On the questions of fraud on the part of election officers and others, intimidation of voters and illegal voting, see *Patton v. Coates*, 41-111. The poll-books and certificates of the election officers are *prima facie* evidence of an election. *Ib.* Refusing legal or receiving illegal votes will not affect the election unless they were sufficient in number to change the majority. *Serpston v. Barton*, *supra*. See also notes (b), (c), (h), (j) and (m), *ante*.

(t) As to withholding commission by the governor, where the party elected is a defaulting collector or holder of public money, see *Serpston v. Barton*, 39-549.

CONTESTING ELECTION OF SENATORS AND REPRESENTATIVES.

SEC. 2730. If any candidate of the proper county or district contests any election of any person returned duly elected to the state senate or house of representatives, such person shall give notice thereof, in writing, to the person whose election he contests, or leave a written notice thereof at the house where such person last resided, within twenty days after the return of the election to the clerk's office, expressing the points on which the same will be contested and the names of the two justices of the peace who will attend to the taking of the depositions, and when and where they will attend to take the same. *Act Jan. 23, 1875, sec. 76.*

SEC. 2731. The time for taking depositions in chief on the part of the contestant shall not exceed thirty days from the day of the election. The justices, or either of them, shall issue subpoenas for all witnesses required by the contestant, commanding such persons to appear before them to testify at the time and place therein mentioned.

SEC. 2732. The contestant shall close his evidence in chief before the contestee commences, and if the contestee does not desire to take any depositions, and so states to the justice, then in that event the justice shall close the case and transmit the papers as herein directed.

SEC. 2733. If the contestee desires to take any proof on any point not set out in the notice served on him, he shall serve a notice in writing on the contestant, setting forth the grounds of his cross contest or new points to be raised on his part, and naming therein some person authorized to take depositions before whom the depositions are to be taken, such notice to be served at least three days before commencing to take depositions.

SEC. 2734. The contestee shall be confined to the grounds or points set out in the notice given by him, and the contestant, after the conclusion of the evidence taken by the contestee, may produce evidence on the said grounds or points; all of his evidence shall be closed at least ten days before the day fixed for the meeting of the general assembly.

SEC. 2735. The contestant may take rebutting testimony up to the day before the meeting of the general assembly, but shall take no evidence thereafter. *Ib., sec. 77, as amended by act March 3, 1883.*

SEC. 2736. If any person summoned as a witness to testify in any contested election shall fail to attend, his attendance may be compelled by attachment.

SEC. 2737. The justices shall hear and certify all testimony relative to such election to the president of the senate, if the contest is for a seat in the senate; and if for a seat in the house of representatives, then to the speaker of the house of representatives.

SEC. 2738. No testimony shall be received on the part of the person contesting the election by the justices which does not relate to the points specified in the notice, a copy of which notice, attested by the person who delivered or served the same, shall be delivered to the justices, and be by them transmitted with the depositions. *Ib., secs. 78-80.*

CONTEST FOR THE OFFICE OF GOVERNOR, SECRETARY OF STATE, ETC.

SEC. 2739. All contested elections of governor, secretary of state, treasurer of state, auditor of state and attorney-general, except as herein provided, shall be decided by the joint vote of both houses of the general assembly, and in such joint meeting the president of the senate shall preside (u).

SEC. 2740. If any person contests the election of governor, he shall present his petition to the general assembly, setting forth the points on which he will contest the same and the facts which he will prove in support of such points, and shall pray for leave to introduce his proofs, and a vote shall be taken by yeas and nays in each house whether the prayer shall be granted.

SEC. 2741. If a majority of the whole number of votes of both houses shall be in the affirmative, they shall appoint a joint committee to take testimony on the part of the petitioner, and also on the part of the person whose place is contested, with power to send for witnesses; who may issue warrants, under the hand of the chairman, to any judge or justice of the peace to take the depositions of witnesses at such time and place as the warrant shall direct, and the points to which the testimony is to be taken shall be set forth in such warrant.

SEC. 2742. Reasonable notice shall be given by the party in whose favor depositions shall be allowed to be taken to the opposite party of the time and place of taking the same, and the judge or justice shall proceed in all things, in the attendance of witnesses and in taking and certifying the testimony, as is directed in the preceding section.

SEC. 2743. The party shall also be allowed to attend the examination of witnesses before the committee, and to cross-examine them, but no testimony shall be taken except in relation to the points set forth in the petition.

SEC. 2744. The committee shall report the facts to the two houses, and the day shall be fixed by a joint resolution for the meeting of the two houses to decide upon the same, on which decision the yeas and nays shall be taken and entered on the journal of each house.

COMPENSATION ALLOWED MESSENGER, JUDGE AND CLERK.

SEC. 2745. Compensation shall be allowed to the messenger employed to convey the returns of any senatorial election to the clerk of the county in the district to whom such returns are required to be made, at the rate of ten cents per mile, going and returning, to be paid by the county sending such returns.

SEC. 2746. There shall be allowed to each judge of the election carrying the returns of any election from his township to the clerk of the county court ten cents per mile, going and returning, from the place of holding the election to the clerk's office, to be paid by the county.

SEC. 2747. Each clerk of the county court shall be allowed, for furnishing blank poll-books, according to the provisions of this act, a sum not exceeding one dollar for each township. *Ib.*, *secs.* 81-89.

(u) See art. VI, sec. 4, *Const.*; *Baxter v. Brooks*, 29-173; *State, etc., v. Baxter, governor*, 28-129.

BURNING TICKETS.

SEC. 2748. It shall be the duty of the clerk of the county to burn the tickets given in at any election at the expiration of four years from the time of said election. *Ib.*, sec. 91.

PRESIDENTIAL ELECTORS—WHEN CHOSEN, ETC.

SEC. 2749. The election or appointment of electors for president and vice-president of the United States shall be had and held on the Tuesday next after the first Monday in the month of November of the year eighteen hundred and seventy-six, and every four years thereafter.

SEC. 2750. The qualified voters in this state shall meet at their respective places of holding elections, and shall proceed to choose as many fit and proper persons as the state shall be entitled to as electors of president and vice-president, which election shall be conducted by the judges who may have been appointed to hold the general election of the state for the same year, and under the same regulations as are or may be required by the law regulating such general election; and it shall be the duty of the judges of such election, in the different townships, to make returns thereof to the clerks having the transaction of county business for their respective counties, within five days after such election; which clerks shall, within five days after they receive such returns, certify and transmit the same by some person employed for that purpose, or by mail, to the governor, whose duty it shall be, within twenty days after the day of election, to add up the votes from the several counties, and the persons having the highest number of votes shall, by him, be declared elected; and it shall be the duty of the governor, at the expense of the state, in all cases, immediately to notify the persons chosen of their election as soon as the same shall have been ascertained, agreeably to the provisions aforesaid.

SEC. 2751. The governor shall, on or before the meeting of such electors, cause three lists of the names of such electors to be made and delivered to them; and the person employed in giving the notices, or conveying the returns, as aforesaid, shall be allowed ten cents per mile for every mile such person may travel in going and returning in the performance of the services aforesaid, to be audited and paid as other claims.

SEC. 2752. The electors shall meet at the seat of government on the first Wednesday in December next ensuing their appointment, and shall then and there give their votes for president and vice-president, and shall do and perform all other duties required of them by the act of Congress in that case made and provided.

SEC. 2753. Each elector for president and vice-president of the United States shall have and receive as a full compensation for his services the sum of two dollars for every twenty miles of travel from his residence and return to his home, and four dollars per diem for every day engaged at the seat of government in casting the vote for president and vice-president of the United States.

SEC. 2754. If the electors appointed under this act, or any of them, fail to attend at the seat of government by the hour of two o'clock in the afternoon of the day pointed out in this act for electing president and vice-president of the United States, then, and in that case, the general assembly, if in session,

shall proceed immediately, by a joint vote of the two houses, to fill such vacancy or vacancies; but if said general assembly shall not on said day be in session, then, and in that case, the governor shall immediately fill such vacancy or vacancies.

SEC. 2755. No senator or representative in congress, or any person holding an office of trust or profit under this state or the United States, shall be eligible as an elector of president and vice-president.

SEC. 2756. In case the election of said electors, or any of them, be contested, it shall be decided as provided by this act for contesting the election of a judge of the supreme court.

SEC. 2757. The judges of election appointed by the county court or chosen by the assembled electors under the provisions of this act shall, if practicable, be from different political parties, so that each party may be represented, and they shall, in addition to the qualifications required by the constitution and this act, be able to read and write, and no candidate for any office elective at any election shall be judge at such election.

SEC. 2758. When not otherwise provided, this act shall apply to and govern the election of all officers required to be elected. *Ib.*, secs. 92-101.

CHAPTER LVII.

ESCHEATS.

SECTION

- 2759. When real or personal estate shall escheat.
- 2760. Administrator to account in such case.
- 2761. Certificates of surplus to be granted.
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- 2764. Judgment, form of, etc.
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- 2766, 2767. Duty of prosecuting attorney.
- 2768. To file information, when.
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SECTION 2759. If any person die seized of any real or personal estate, without any devise thereof, and leaving no heirs or representatives capable of inheriting the same, or the devisees be incapable of holding the same, and where there is no owner of real estate capable of holding the same, such estate shall escheat to and vest in the state.

SEC. 2760. Where there is administration granted, and there are no known heirs or legal representatives of the intestate, or no person shall appear, within two years after granting letters of administration to claim the personal estate of such intestate, as next of kin, the administrator, in the settlement of his

accounts with the proper court, shall account for all money which may come to his hands as administrator.

SEC. 2761. If there be more than sufficient to pay the debts of the deceased and the expenses of administration, such court shall, on settlement, ascertain the amount remaining in the hands of such administrator, and grant duplicate certificates thereof, one of which shall be delivered to the prosecuting attorney for such circuit, and the other to the auditor of state, who shall charge the administrator with the amount.

SEC. 2762. Such administrator shall pay the amount into the state treasury within three months after such settlement; and when he shall pay the same the treasurer shall give him duplicate receipts therefor, one of which he shall deliver to the auditor, who shall grant him a certificate thereof, and credit him with the amount so paid into the treasury, and shall charge the treasurer therewith.

SEC. 2763. The court having the settlement of accounts with such administrator shall, on the production of the auditor's certificate to them, credit the administrator with the amount; but if payment shall not be made as aforesaid, the prosecuting attorney for the circuit shall move the court for judgment against such administrator and his securities, or either of them, for such balance, and three per cent. per month thereon, giving to such administrator and his securities ten days' notice of such intended motion; and the said court shall hear and determine the same in a summary manner, without the necessity of formal pleading.

SEC. 2764. If such administrator, or his securities, shall not produce the auditor's certificate, showing full payment into the state treasury, such court shall render judgment against such administrator and his securities, or such of them as shall receive notice, for the amount due, and three per cent. per month thereon from the time the balance was first ascertained until the rendition of the judgment, and the costs of the proceedings, and issue execution thereon.

SEC. 2765. If the auditor's certificate be produced, such administrator and his securities shall, nevertheless, be adjudged to pay the costs of the proceedings, and shall in no case recover costs.

SEC. 2766. Where there are no known heirs or legal representatives, the prosecuting attorney for the circuit within which the courts are held wherein the accounts of any such administrator are required to be settled shall examine the proceedings of such administration; shall cause process to be issued to compel the prompt settlement of his accounts; attend such settlement, when necessary, on behalf of the state; contest any item which to him shall appear unjust or unreasonable; and, in case of waste and mismanagement of the estate, or other maladministration, cause proper suits and proceedings to be instituted and prosecuted.

SEC. 2767. He is required, in behalf of the state, to do all things touching such administration which could be done by any sole heir, and especially to preserve the real estate from being improperly sold, wasted or damaged; and it is made his special duty, by himself or his deputy, whom he may make when inconvenient to attend in person, to attend all the courts in his circuit in which any case under this act may be pending.

SEC. 2768. When the prosecuting attorney for the circuit shall be informed, or have reason to believe, that any real estate within his circuit hath escheated

to the state, and such estate shall not have been sold, according to law, within three years after the death of the person last seized, for the payment of the debts of the deceased, he shall file an information, in behalf of the state, in the circuit court of the county in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names of the terre-tenants, and persons claiming the estate, if known, and the facts and circumstances in consequence of which such estate is claimed to have escheated, and alleging that, by reason thereof, the State of Arkansas hath right to such estate.

SEC. 2769. Such court shall award and issue a *scire facias* against such person, bodies politic or corporate, as shall be alleged, in such information, to hold, possess or claim such estate, requiring them to appear and show cause why such estate should not be vested in the state, at the next term of the court.

SEC. 2770. Such *scire facias* shall be served fifteen days before the return day thereof; and the court shall make an order setting forth briefly the contents of such information, and requiring all persons interested in the estate to appear and show cause, at the next term of the said court, why the same shall not be vested in the state; which order shall be published four weeks in some newspaper as provided in sections 4356, 4357 and 4358.

SEC. 2771. All persons, bodies politic and bodies corporate named in such information as terre-tenants or claimants of the estate may appear and plead to such proceeding, and may traverse the facts stated in the information, or the title of the state to the lands and tenements therein mentioned, at any time on or before the third day after the return of the *scire facias*; and any other person claiming an interest in such estate may appear and be made a defendant, and plead, by motion for that purpose in open court, within the time allowed for pleading.

SEC. 2772. If no person shall appear and plead, or, appearing, shall refuse to plead within the term, then judgment shall be rendered that the state be seized of the lands and tenements in the information claimed.

SEC. 2773. If any person appear and deny the title set up by the state, or traverse any material fact in the information, issue shall be made up and tried as other issues of fact; and a survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question.

SEC. 2774. If, after the issues are tried, it appears, from the facts found or admitted, that the state hath good title to the lands and tenements in the information mentioned, or any part thereof, judgment shall be rendered that the state be seized thereof, and recover costs against the defendant.

SEC. 2775. If it appear that the state hath no title in such estate, the defendant shall recover his costs, to be taxed and certified by the clerk; and the auditor of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the treasury of the state, which shall be paid as other demands on the treasury; but no defendant shall be entitled to recover costs unless the title to such estate shall appear to the court, by the facts found, to be in him.

SEC. 2776. When any judgment shall be rendered that the state be seized of any real estate, such judgment shall contain a description of such estate, and shall vest the title in the state.

SEC. 2777. A writ shall be issued to the sheriff of the proper county, commanding him to seize the real estate vested in the state.

SEC. 2778. Upon the return of such writ of seizure, the prosecuting attorney shall cause the record and process to be exemplified under the seal of the court, and deposit the same in the office of the auditor, and cause a transcript of the judgment to be recorded in the office of the recorder of the county in which the lands lie; and such judgment shall preclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in force.

SEC. 2779. Any party who shall have appeared to any proceedings, and the prosecuting attorney, on behalf of the state, shall have the right to prosecute an appeal or writ of error upon such judgment.

SEC. 2780. The auditor shall keep accounts of all moneys paid into the treasury, and of all lands vested in the state under the provisions of this act.

SEC. 2781. If any person appear within seven years after the death of the intestate and claim any money paid into the treasury under this act as heir or legal representative, he may file a petition in the circuit court, or court having chancery jurisdiction for the county in which the estate is situate, stating the nature of his claim and praying that such money may be paid to him; a copy of which petition shall be served on the prosecuting attorney for the circuit, who shall put in an answer to the same.

SEC. 2782. The court shall examine the claim and the allegations and proofs, and, if they shall find that such person is entitled to any money so paid into the treasury, such court shall make an order directing the auditor to issue his warrant on the treasurer for the payment of the same, but without interest or costs; a copy of which order, under the seal of the court, shall be a sufficient voucher for issuing such warrant.

SEC. 2783. If any person appear and claim lands vested in the state within seven years after the death of the last person seized, such person (other than such as were served with *scire facias*, or appeared to the proceeding, their heirs or assigns) may file his petition in the circuit court, or court having chancery jurisdiction in the county or district where such land may lie, setting forth the nature of his demand or claim, and praying that the said estate may be relinquished to him.

SEC. 2784. A copy of which petition shall be served on the prosecuting attorney for the circuit, who shall answer; and the court shall examine the claim and allegations, together with such proof as may be adduced, and, if it appear that the person is entitled to such lands, the court shall decree accordingly, which shall divest the interest of the state in such estate; but no costs shall be adjudged against the state in such case.

SEC. 2785. All persons who fail to appear and file their petitions within the time limited shall be forever barred, except the usual saving to infants.

SEC. 2786. The general assembly may cause such estate to be sold at any time after seizure, in such manner as may be provided by law; in which case the claimants shall be entitled to the proceeds, in lieu of the real estate, upon obtaining a decree or order as aforesaid. *Rev. Stat., chap. 57.*

CHAPTER LVIII.

ESTRAYS.

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SECTION 2787. Every citizen, resident householder in any county in this state, on finding any horse, mare, mule, jack or jenny, any neat cattle, hog or sheep, of any age, running at large, the owner of which is not known, may take into his custody such animal. *Rev. Stat., chap. 58, sec. 1.*

SEC. 2788. No person shall take up any neat cattle, hogs or sheep running in the range, or unless the same shall be found within their inclosure, from the first of April until the first of November. *Ib., sec. 19.*

SEC. 2789. No person shall take up any stray beast, except on his own plantation or in his immediate vicinity. *Ib., sec. 23.*

SEC. 2790. Every person taking up any estray animal shall, immediately, if such animal is marked or branded, proceed to the office of the clerk of the county court of the county in which such animal is taken up and shall cause such clerk to examine the record of the marks and brands of such county, and if it be found that the mark or brand upon the animal taken up is entered upon such record, the taker-up or impounder of such animal shall at once notify the owner of such mark and brand of his having taken up such animal, giving an exact description thereof. The taker-up or impounder of such animal shall receive a reasonable compensation for his trouble. *Provided, however,* if such animal is taken from the range where the stock of the owner is accustomed to be kept, such impounder or taker-up shall receive nothing.

SEC. 2791. Upon such taker-up of any animal causing examination of the record of marks and brands to be made by the county clerk, as in the preceding section prescribed, such county clerk shall give to such impounder a certificate of such examination having been made, setting out in such certificate the description of the animal and the marks and brands, or either thereof; and

such impounder shall pay said clerk twenty-five cents as a fee for said certificate (*).

SEC. 2792. Upon failure to find any record of the mark or brand of the animal taken up, or when the person in whose name such mark or brand is found recorded proves not to be the owner of such animal, the impounder or taker-up of such animal shall put, or cause to be put up, posters in three of the most public places in the township or neighborhood where such animal is taken-up, giving a full detailed description of such animal, stating the marks, age, color and value of such animal, and at the same time deliver to the clerk of the county court a copy of such poster, and said clerk shall at once enter a full copy of such poster in a book to be by him kept for that purpose, and shall set up said poster upon the court-house door (**).

SEC. 2793. If at the expiration of ten days from the date of such poster such animal has not been proven away, it shall be the duty of the impounder to give notice to the nearest justice of the peace of the county of the taking up of such animal, and he shall, at the time of giving such notice, file with such justice of the peace the certificate of the clerk of the county court of the examination of the record of marks and brands, if the animal taken up is marked or branded. If said animal should be proven away, as provided in this section, it shall be the duty of the person proving away such animal to pay a reasonable charge for feeding and advertising such animal. *Provided*, such animal has not been used by the person taking it up. In such case no charge shall be made for such feeding and advertising. *Ib.*, sec. 2, as amended by act Feb. 3, 1875, and act March 30, 1883.

SEC. 2794. In addition to the notice required by the foregoing section, it shall be the duty of such taker-up, at the time of giving such notice, to take, also, an oath before said justice that said estray was taken up on the plantation of said person, or in his immediate vicinity, and that he had no agency in bringing said estray into said vicinity. *Act Dec. 28, 1840.*

SEC. 2795. Every justice of the peace, on receiving notice of any animal being taken up, and oath made as aforesaid, shall forthwith appoint (a) three

(*) FORM OF CLERK'S CERTIFICATE.
STATE OF ARKANSAS, }
COUNTY OF ____.

I, _____, clerk of the circuit court and *ex officio* clerk of the county court within and for the county of _____, do certify that, upon the application of _____, I have this day examined the record of marks and brands of said county, and find that the mark of a certain _____, marked _____, and taken up by said _____ as an estray, is entered upon said record as the mark of _____. (Or if no such mark is found after the word "is," in the last line, add the words "not entered upon said record.")

Witness my hand and the seal of said court this the first day of December, 1884.

_____, Clerk.

(**) FORM OF POSTER.
ESTRAY NOTICE.

On the first day of December, 1884, in the township of _____, in the county of _____, the undersigned took up as an estray a certain _____ (insert full description of animal, stating marks, age, color and value).

If at the expiration of ten days from the date of this notice said animal has not been proven away, notice of the taking up of the same will be given to C. D., a justice of the peace of said county, that other proceedings may be had according to law.

December 4, 1884.

A. B.

(a) APPOINTMENT OF APPRAISERS.
STATE OF ARKANSAS, }
COUNTY OF ____.

I, _____, an acting and duly commissioned justice of the peace in and for the county of _____, do hereby appoint _____, _____ and _____, three citizens and householders of said county, to appraise and describe a certain _____ taken up by _____, on the _____ day of _____, 18—, as an estray.

Given under my hand this _____ day of _____, 18—.

_____, J. P.

appraisers, who shall be citizen householders of the county, to appraise and describe such animal. *Rev. Stat., chap. 58, sec. 3.*

SEC. 2796. The appraisers so appointed shall, as soon as practicable, proceed to view such animal, and make out a detailed description thereof, stating the marks, brands, age, color, stature and value thereof, which description and valuation shall be signed by the appraisers and sworn to before the justice appointing them (b). *Ib., sec. 4.*

SEC. 2797. Such description and valuation, so sworn to, shall be, by the appraisers, delivered to the justice of the peace, who shall deliver to the person taking up such animal a copy thereof. *Ib., sec. 5.*

SEC. 2798. The original of such certificate of appraisement the justice shall, within ten days, cause to be deposited in the office of the county clerk. *Ib., sec. 6.*

SEC. 2799. Every person taking up an animal as a stray shall, at the time of the appraisement thereof, enter into bond (c), with sufficient security, to be approved by the justice who appoints the appraisers, in the value of such animal, to the State of Arkansas, conditioned that if the owner of such animal shall, within one year from the date thereof, appear and prove his property in the animal so taken up, he will deliver up said animal; or, if such owner should fail to prove his property therein within the year, that he, the obligor, will pay into the county treasury one-half of such appraised value, deducting all legal expenses of said beast, stating the amount of such appraisement. *Act Feb. 3, 1843, sec. 38.*

SEC. 2800. The justice, at the time of depositing the certificate of appraisement with the clerk for record, shall also file with such clerk the bond required by law, which bond shall be kept by such clerk. *Rev. Stat., chap. 58, sec. 8.*

SEC. 2801. It shall be the duty of every county clerk to keep a book in which he shall record all descriptions and valuations of animals taken, and shall also note on all bonds required to be deposited in his office under the provisions of this chapter the time of filing the same, and keep such bonds safely for the use of the county. *Ib., sec. 9.*

(b) APPRAISEMENT.

COUNTY OF _____.

We, _____ and _____, three citizens of the county of _____, and householders therein, having thereto been appointed by _____, a justice of the peace of said county, have this day viewed a certain _____, shown to us by _____, as an estray. Said _____ is, etc. (describing it particularly), and we do value the said _____ to be worth the sum of _____ dollars.

_____,
_____,
_____,
Appraisers.

Subscribed and sworn to before me this _____ day of _____, 18—.

_____, J. P.

(c) FORM OF BOND.

We acknowledge ourselves indebted to the State of Arkansas in the sum of _____ dollars. This obligation is upon this condition: Whereas, the undersigned _____ has taken up a certain _____ as an estray, which has this day been appraised and valued at said sum of _____ dollars. Now, if in case the owner of said _____ shall, within one year from this date, appear and prove his property in said _____, the said _____ shall deliver up said _____; or, if in case such owner shall fail to prove his property therein within one year from this date, the said _____ shall pay into the treasury of said county one-half of said appraised value, deducting all legal expenses of said beast; then this bond to be void.

_____,
_____,
_____.

Approved:
_____, J. P.

SEC. 2802. The person taking up any animal under the provisions of this chapter shall immediately make out, from the copy of the appraisement delivered to him by the justice, four advertisements, and put them up in the most public places in his township and county (*). *Ib.*, sec. 10.

SEC. 2803. If the animal taken up be a horse, mare, mule, jack or jenny, the taker-up shall, in addition to the advertisement required by this chapter, cause a copy of the description and appraisement to be inserted in some newspaper as provided in chapter 94 (†), if such animal be of the appraised value of twenty dollars, as hereinafter provided. *Ib.*, sec. 11.

SEC. 2804. If the owner of any stray horse, mare, mule, jack or jenny do not prove said stray according to law within twenty days from the time the same was taken up, the person taking it up shall pay the clerk all fees, the necessary postage and the price of advertisement; and the clerk shall immediately transmit, by mail or otherwise, to the printer a copy of the appraisement of the stray, and shall account to the printer for all money received by him. *Act Dec. 3, 1846.*

SEC. 2805. It shall be the duty of the county court, at the expense of the county, to provide a pound-lot or stray-pen sufficient to contain all stray horses, mares, mules, jacks or jennies which may be taken up in their respective counties, which stray-pen shall be within one-half mile of the court-house. *Rev. Stat., chap. 58, sec. 12.*

SEC. 2806. Every person taking up any horse, mare, mule, jack or jenny shall, on the first day of the next term of the circuit court of his county, take such animal to the stray-pen of his county and keep it therein, subject to the inspection of all persons, from eleven of the clock in the forenoon until three of the clock in the afternoon of such day. *Ib.*, sec. 13.

SEC. 2807. If the owner of any stray animal shall, within one year from the time of the filing of the bond required by law, appear and claim the same, he shall notify the taker-up thereof; and the owner shall establish his claim to such animal before some justice of the peace of the county by such evidence as shall be satisfactory to such justice. *Act Dec. 24, 1842.*

SEC. 2808. On such justice being satisfied of the ownership of any animal so taken up, he shall make an order in writing requiring the taker-up of such animal to deliver the same to the owner on his paying the legal costs that have accrued thereon (d).

SEC. 2809. The person having the animal so proven and required to be given up by such justice's order shall deliver the same to the owner on receiving the amount of costs legally due thereon, and shall take a receipt indorsed

(*) See SEC. 1860.

(†) See SECS. 4356-4360, 4363.

(d) An appeal does not lie from an order of a justice made under this section. *Langley v. Barkman*, 23-293.

FORM OF ORDER.

STATE OF ARKANSAS, }
COUNTY OF ———, }

Whereas, ——— has this day appeared before me, ———, a justice of the peace of said county, and, after due notification to ———, has proven to my satisfaction that a certain ———, heretofore taken up by said ———, and appraised on the ——— day of ———, 18—, by ———, ——— and ———, appraisers by me appointed, and in such appraisement described as ———, and valued at ———, is the property of him, the said ———, I have therefore ordered and adjudged that said ——— forthwith deliver said ——— to said ———, upon his paying all the legal costs that have accrued thereon.

Given under my hand this ——— day of ———, 18—.

————, J. P.

on the justice's order for such animal; which order and receipt thereon shall be filed with the clerk of the county, upon the filing of which his bond shall be deemed to be canceled.

SEC. 2810. If the owner of any lost animal shall not appear and prove his property therein within one year after the time of setting up the copies of the valuation and description of such animal and the filing of the bond required, he shall forfeit his right to such animal, and the property therein shall be vested in the finder or taker-up of the same. *Rev. Stat., chap. 58, secs. 15-17.*

SEC. 2811. If any person who has taken up any animal shall refuse to deliver the same to the owner on his having complied with the requisitions of law as respects proving the same, such owner shall have his action; and if such owner recover in such action, he shall also recover double costs (e). *Ib., sec. 18.*

SEC. 2812. No person shall charge anything for keeping any horse, mare, mule, jack or jenny which may be worked or ridden while in the possession of the taker-up. For the keeping of other animals, or the aforesaid beasts, if not worked or ridden, the person taking them up shall be entitled to a reasonable compensation, to be adjudged by the justice before whom the owner proves his right of property. *Ib., sec. 20.*

SEC. 2813. No person taking up any animal shall sell, exchange or dispose of the same in any manner, nor kill any neat cattle, hogs or sheep, until after the expiration of the time that the owner has the right to prove his property in the same (*). *Ib., sec. 21.*

SEC. 2814. If any of the aforesaid animals die or escape from the possession of the taker-up before the owner shall establish his right thereto, if such death or escape be without the default of the person having the lawful possession thereof, he shall not be liable for the same. *Ib., sec. 22.*

SEC. 2815. No person shall use, work or exercise any acts of ownership over any animal by him taken up until he shall have given notice thereof to the justice of the peace, except that he may ride such beast to the residence of the justice, for the purpose of giving the notice to such justice. *Ib., sec. 24.*

SEC. 2816. Every person who shall take up any stray beast, which the owner thereof shall not reclaim within one year, shall pay into the county treasury of the county where such stray was taken up one-half of the residue of the appraised value thereof, after deducting all legal expenses of the said beast. *Act Jan. 9, 1845.*

SEC. 2817. After the term of one year from the taking up of any beast, if the order of the justice requiring the taker-up of such beast to return the animal to the owner, with the owner's receipt thereon, shall not be filed with the clerk, or the one-half of the appraised value paid into the treasury, and the county treasurer's receipt filed with the clerk, such clerk shall issue a notice to the delinquent to appear at the next session of the county court for such county, and show cause, if any he can, why judgment shall not be entered against him, in favor of the state, for the benefit of the county. *Rev. Stat., chap. 58, sec. 26.*

(e) The owner of a posted animal can not maintain replevin therefor until he has proven his property before a justice and paid (or tendered) the costs to the taker-up. *Phelan v. Bonham*, 9—389. See also *Davis v. Calvert*, 17—85.

(*) See SEC. 1861.

SEC. 2818. Such notice shall be, by the clerk, delivered to the sheriff, and by him served on such person. *Ib.*, sec. 27.

SEC. 2819. If no sufficient cause be shown, the court shall enter judgment against such delinquent for the amount due the county, with costs; and execution shall issue for the same as in other cases. The cause shall be tried without the necessity of formal pleadings. *Ib.*, sec. 28.

SEC. 2820. If any person shall fail to file with the clerk of the county the treasurer's receipt, or the receipt of the owner of the animal for which he executed his bond on taking up the same, although he may have paid the amount due on such bond to the county treasurer, or returned the animal in question to the proper owner, the court shall enter judgment against him for all costs. *Ib.*, sec. 29.

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SECTION 2821. The printed statute books of this state shall be evidence of the private acts contained therein.

SEC. 2822. The printed statute books of the several states and territories of the United States, purporting to have been printed under the authority of such states or territories, shall be evidence of the legislative acts of such states or territories (**).

SEC. 2823. Copies of any act, law or resolution contained in the printed statute books of any of the states and territories of the United States, purport-

(*) As to deeds, see SECS. 664, 665; when made by commissioner of state lands, SECS. 4243, 4245, 4246, 4305; by clerk at tax sale, SEC. 5780; by administrator, executor, guardian, commissioner or sheriff, SECS. 668, 669; and further as to guardians, SECS. 3507, 3508.

(**) See *Clark v. Bank of Mississippi*, 10—516; *May v. Jamison*, 11—368; *Johnson v. Cocks*, 12—672; *McNeil v. Arnold*, 17—168; *Bowles v. Eddy & Wilbur*, 33—645.

ing to have been printed by authority, and which are now, or which may hereafter be, deposited in the office of the secretary of this state, and required by law to be there kept, certified under the seal of the secretary of state, shall be admitted as evidence.

SEC. 2824. Copies of proceedings before justices of the peace, certified by the justice before whom the proceedings were had, shall be evidence of such proceedings (**).

SEC. 2825. When the docket, files, books and papers of a justice of the peace shall have been delivered to the clerk of the circuit court, according to law, copies of such docket, files, books and papers, certified by such clerk, shall be evidence.

SEC. 2826. Copies of entries made in the books of any land office of this state, or papers filed therein, certified by the register or receiver, shall be evidence to the same extent as the original books or papers would be if produced. *Rev. Stat., chap. 59, secs. 1-6.*

SEC. 2827. Copies of any act, resolution or order of the general assembly, commissions or other official acts of the governor, and of all rolls, records, documents, papers, bonds and recognizances deposited in the office of the secretary of state, and required by law there to be kept, certified under his hand and seal of office, shall be received in evidence in the same manner and with like effect as the original. *Act Jan. 4, 1849.*

SEC. 2828. Copies of all papers and documents legally deposited in the office of either the auditor or treasurer of state, when certified by said officer and authenticated by his seal of office, shall be received in evidence in the same manner and with like effect as the original. *Rev. Stat., chap. 18, sec. 6.*

SEC. 2829. Where a debt due to the state appears upon the books of the auditor, or of any other public officer whose duty it shall be to audit and keep an accurate account of such debt, a copy of the balance due upon the books of such auditor or officer, certified by him to be a correct and true balance, shall be sufficient evidence of such indebtedness (a). *Civil Code, sec. 487.*

SEC. 2830. A copy of any paper or document deposited or filed in the office of the superintendent of public instruction shall, when authenticated by his official seal, be evidence equal, to all intents and purposes, with the original. *Act April 29, 1873, sec. 106.*

SEC. 2831. The protest made by a notary public, under his hand and seal of office, shall be evidence of the facts therein contained. *Rev. Stat., chap. 20, sec. 11.*

SEC. 2832. The certificate of a notary public, under his hand and seal of office, that he forwarded notice of protest, shall be *prima facie* evidence of that fact (*). *Act Feb. 21, 1859, sec. 1.*

SEC. 2833. All certified transcripts from the office of the auditor, and all

(*) See *Gates v. Bennett*, 33—475; *S. L., I. M. & S. Railway Co. v. Barnes*, 35—95.

(a) In an action on the official bond of the state treasurer, a copy of his accounts from the auditor's books, properly certified, is *prima facie* evidence of the state of his accounts: and the jury should be instructed not to go into the accounts, but to take the balance certified by the auditor, unless the accuracy of the items is impeached. *State v. Newton*, 33—276. A copy of accounts rendered by the state treasurer, being statements made by him to the state in the performance of his official duties, is *prima facie* evidence against him and his sureties in an action on his official bond. *Ib.*

(*) The certificate of the notary that he has mailed notice to the indorser is *prima facie* evidence of the fact. *Peters v. Hobbs*, 25—67.

certified transcripts from the office of the commissioner of state lands, shall be received in evidence of the existence of the records of which the transcript is a copy. *Act Jan. 12, 1853, sec. 24, and act July 15, 1868.*

SEC. 2834. Any extract, entry or entries from tax-lists, books, tax-books, or any of the records of the office of auditor, properly certified by him, shall be received in evidence in the same manner as if the copy of the entire list, book, tax-book or other record had been produced. *Act Jan. 12, 1853.*

SEC. 2835. Printed copies of the ordinances, resolutions, orders and by-laws of any city or incorporated town in this state, published by the authority of such city or incorporated town, and manuscript copies of the same, certified under the hand of the proper officer, and having the corporate seal of such city or town attached thereto, shall be received as evidence.

SEC. 2836. Copies of all bonds required by law to be given by sheriffs, collectors, state and county treasurers, clerks of the supreme and circuit courts, and all officers of or under the state, and of all county and township officers who are required by law to give bond for the faithful performance of their duties, duly certified under the seal of office of the officer in whose custody such bonds are required by law to be kept, shall be received as evidence to the same extent as the originals.

SEC. 2837. Copies of contracts entered into by individuals with the state, or any officer thereof, or with any county, or with any person for the benefit of any county, under or by the authority of any law, or the lawful order of any court, in the custody of any officer, duly certified and attested under the official seal of such officer, or, if such officer has no official seal, then verified by his affidavit, shall be allowed as evidence to the same extent as the original.

SEC. 2838. Copies of all bonds required by law to be given by executors, administrators, guardians and commissioners, for the faithful performance of their duties as such, and the bonds of principal and security required to be taken in the course of any judicial proceeding in any of the courts of this state, duly certified and attested under the seal of office of the officer to whom, by law, the custody of the same is committed, shall be evidence to the same extent as the originals.

SEC. 2839. When suit shall be brought on any copy of a bond, or contract, or writing, mentioned in any of the three preceding sections, and the defendant shall, by his answer under oath, deny the execution of the instrument, the court may, if necessary to the attainment of justice, require the production of the original bond or writing. *Rev. Stat., chap. 59.*

SEC. 2840. The regular and fairly kept books of original entries of a deceased merchant or regular trader, or any person keeping running accounts for goods, wares, merchandise or other property sold or labor done, accompanied by the affidavit of the executor or administrator of such deceased person, or some creditable person for him, setting forth that they are the books or accounts of his testator or intestate, shall be evidence to charge the defendant for the sums therein specified, subject to be repelled by other competent testimony (*).

SEC. 2841. To entitle the party to introduce such evidence, he must first establish, to the satisfaction of the court, that his testator or intestate had the reputation of keeping correct books.

(*) See *Burr v. Byers*, 10—398; *Mathews v. Sanders*, 15—255.

SEC. 2842. Nothing in the two preceding sections shall be so construed as to extend to or include hawkers or peddlers. *Rev. Stat., chap. 59, secs. 7-9.*

PRODUCTION OF BOOKS, PAPERS, ETC.

At Law.

SEC. 2843. Every court of record shall have power to compel any party to a suit pending therein to produce any books, papers and documents in his possession, or under his control, relating to the merits of such suit, or to any defense therein.

SEC. 2844. To entitle the party to the production of any such books, papers and documents, he shall present a petition, verified by the affidavit of himself or some other person, to the court, or the judge thereof in vacation, upon which an order may be made by such court or judge for the production of such books, papers and documents, or that the party show cause why the prayer of the petition should not be granted.

SEC. 2845. Every such order may be vacated by the court or judge granting the same—first, upon satisfactory evidence that it ought not to have been granted; second, upon the party required to produce such books, papers and documents denying on oath the possession or control thereof.

SEC. 2846. If the party neglect to obey such order for the production of books, papers and documents within such time as the court or judge shall prescribe for that purpose, the court may non-suit him, or strike out any plea or notice of set-off, or debar him from any particular defense in relation to which such books, papers and documents were required to be produced.

SEC. 2847. The power of the court to compel such production of books, papers and documents shall be confined to the remedies in this act provided; and shall not authorize any other proceeding against the person or property of the party refusing to comply with the order of the court or judge. *Rev. Stat., chap. 116, secs. 88-92.*

In Equity.

SEC. 2848. The court, in an action by equitable proceedings, shall have power, on sufficient cause shown by affidavit, due notice of the application being given to the adverse party, to require the parties, or either of them, to produce books, deeds or other writings in their power, which are alleged to contain evidence pertinent to the matter in controversy.

SEC. 2849. If either party shall fail or refuse to comply with such order, and shall not satisfy the court that it is not in his power to produce the books, deeds or writings, nor show other sufficient excuse, the court may take the allegations in relation to the books, deeds or writings not produced as confessed, or may proceed against the party in default by attachment. *Rev. Stat., chap. 23, secs. 52, 53.*

DEATH, WHEN PRESUMED.

SEC. 2850. Any person absenting himself beyond the limits of this state for five years successively shall be presumed to be dead, in any case in which

his death may come in question, unless proof be made that he was alive within that time. *Rev. Stat., chap. 46, sec. 1.*

RULES OF EVIDENCE IN CRIMINAL CASES.

SEC. 2851. In trials for treason, no evidence shall be given of an overt act that is not expressly laid in the indictment, and no conviction shall be had unless one or more overt acts be alleged therein.

SEC. 2852. In trials of indictments for conspiracy, in cases where an overt act is required by law to consummate the offense, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but overt acts, other than those alleged in the indictment, may be given in evidence on the part of the prosecution.

SEC. 2853. If, on the trial of any indictment or other proceeding in a criminal cause, the existence, constitution or powers of any banking company shall become material, or be in any manner drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation; but the same may be proved by general reputation, or by the printed statute book of the state by which such corporation was created.

SEC. 2854. On the trial of any indictment for counterfeiting any bill or note of any bank of this state, or of the United States, or of any other state or territory of the United States, the prosecuting attorney shall not be required to produce, on the trial, an authenticated copy of the charter of the bank; but the same may be established in the manner prescribed in the preceding section.

SEC. 2855. No person shall be rendered incompetent to testify in criminal cases by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or because he would be entitled to satisfaction for the injury, or may be liable to pay the costs of prosecution.

SEC. 2856. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against him in any criminal prosecution for the same offense (*). *Rev. Stat., chap. 45, secs. 72, 162, 164-167.*

COMPETENCY OF WITNESSES.

SEC. 2857. In civil actions, no witness shall be excluded because he is a party to the suit or interested in the issue to be tried. *Provided*, that in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transactions with or statements of the testator, intestate or ward, unless called to testify thereto by the opposite party (**). *Provided, further*, that this section may be amended or repealed by the general assembly. *Sched., sec. 2, Const.*

(*) See art. II, sec. 8, *Const.*, and note (e) thereto; art. III, sec. 9, *Const.*

(**) See *Giles v. Wright*, 26—476; *Miller v. Jones*, 32—337; *Wassell v. Armstrong*, 35—247; *Bird v. Jones*, 37—195; *McDearmon v. Maxfield*, 38—631.

SEC. 2858. All persons except those enumerated in the next section shall be competent to testify in a civil action. *Civil Code, sec. 662.*

SEC. 2859. The following persons shall be incompetent to testify:

First. Persons convicted of a capital offense, or of perjury, subornation of perjury, burglary, robbery, larceny (b), receiving stolen goods, forgery or counterfeiting, except by consent of the parties.

Second. Infants under the age of ten years, and over that age if incapable of understanding the obligation of an oath.

Third. Persons who are of unsound mind at the time of being produced as witnesses.

Fourth. Husband and wife, for or against each other, or concerning any communication made by one to the other during the marriage, whether called as a witness while that relation subsists or afterward (c), but either shall be allowed to testify for the other in regard to any business transacted by the one for the other in the capacity of agent.

Fifth. An attorney, concerning any communication made to him by his client in that relation, or his advice thereon, without the client's consent (*). *Ib., sec. 663, as amended by act Feb. 12, 1883.*

SEC. 2860. All other objections to witnesses shall go to their credit alone, and be weighed by the jury or tribunal to which their evidence is offered. *Civil Code, sec. 664.*

SEC. 2861. No minister of the gospel or priest of any denomination shall be compelled to testify in relation to any confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

SEC. 2862. No person authorized to practice physic or surgery shall be compelled to disclose any information which he may have acquired from his patient while attending him in a professional character, and which information was necessary to enable him to prescribe as a physician or do any act for him as a surgeon (**). *Rev. Stat., chap. 158, secs. 21, 22.*

OATHS, HOW AND BY WHOM ADMINISTERED.

SEC. 2863. The usual mode of administering oaths now practiced, by the person who swears laying his hand on and kissing the gospels, shall be observed

(b) A conviction for petit larceny disqualifies the defendant as a witness. *Hall v. Doyle*, 35—445.

(c) See *Collins v. Mack*, 31—684; *Rickerstricker v. State*, *Id.*, 207; *Phipps v. Martin*, 33—207; *Beecher v. Brookfield*, *Id.*, 259; *L. R. & F. S. R. R. Co. v. Payne*, *Id.*, 816; *Watkins v. Turner*, 34—663. Since the decisions in these cases, the fourth paragraph of this section has been so amended that a husband or wife is now "allowed to testify for the other in regard to any business transacted by the one for the other in the capacity of agent." *Act Feb. 12, 1883.*

A married woman interpleading for property seized as her husband's in an action of replevin against him is a competent witness for herself on the trial of the interplea. *Berlin v. Cantrell*, 33—611. See also *Klenk v. Knoble*, 37—298.

The husband and wife are competent witnesses in divorce cases; but a decree should never be granted upon the uncorroborated testimony of the parties. *Kurtz v. Kurtz*, 38—119; *Brown v. Brown*, *Id.*, 324; *Rie v. Rie*, 34—37.

As to testimony of wife of co-defendant in same indictment, see *Carr v. State*, 42—204.

The rule which excludes the husband and wife from being witnesses for or against each other does not extend to persons who cohabit together as husband and wife without lawful marriage. *Rickerstricker v. State*, 31—207; *Flanagin v. State*, 25—92.

(*) See *Andrews v. Simms*, 33—771.

(**) See *Collins v. Mack*, 31—684.

in all cases in which an oath is or may be required by law to be administered, except as herein otherwise provided.

SEC. 2864. Every person who shall desire it shall be permitted to swear with an uplifted hand in the following form: "You do solemnly swear," etc.

SEC. 2865. Every person who shall declare that he has conscientious scruples against taking an oath or swearing in any form shall be permitted to make his solemn declaration or affirmation in the following form: "You do solemnly and truly declare and affirm."

SEC. 2866. Whenever the court or magistrate by whom any person is about to be sworn shall be satisfied that such person has any peculiar mode of swearing connected with or in addition to either of the forms mentioned, which is more solemn and obligatory in the opinion of such person, the court or magistrate may adopt such mode of swearing (d).

SEC. 2867. Every person believing in any other than the Christian religion shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies, instead of the modes heretofore prescribed.

SEC. 2868. Every court and clerk thereof, judge, master or commissioner, and all justices of the peace and arbitrators, shall respectively have power to administer oaths and affirmations to witnesses and others concerning any matter or proceeding depending before them (e).

SEC. 2869. In all cases in which an oath is required or authorized by law, the same may be taken in any of the forms in this act prescribed in the several cases hereinbefore specified; and every person swearing, affirming or declaring in any such form, or any form authorized by law, shall be deemed to have been lawfully sworn, and to be guilty of perjury for corruptly and falsely swearing, affirming or declaring in the same manner as if he had sworn by laying his hand on the gospels and kissing them. *Rev. Stat., chap. 105.*

EVIDENCE, BY WHOM TO BE PRODUCED.

SEC. 2870. The party holding the affirmative of an issue must produce the evidence to prove it.

SEC. 2871. The burden of proof in the whole action lies on the party who would be defeated if no evidence were given on either side.

SEC. 2872. Where a writing purporting to have been executed by one of the parties is referred to in and filed with a pleading, it may be read as genuine against such party, unless he denies its genuineness by affidavit before the trial is begun (*). *Civil Code, secs. 578-580.*

MEANS OF PRODUCTION.

SEC. 2873. The process by which the attendance of a witness is required is a subpoena. It is a writ directed to the sheriff, requiring him to summon the person named therein to attend at a particular time and place to testify as a witness. *Ib., sec. 581.*

(d) See art. II, sec. 26, *Const.*

(e) For officers who may take affidavits generally, see SECS. 2917, 2918.

(*) See *George v. St. L., I. M. & S. Ry. Co.*, 34-622. When a defendant, in his answer, directly denies the execution of the instrument sued on, and verifies the answer by his affidavit, there is no necessity for an additional affidavit. *Weaver v. Carnall*, 35-198.

SEC. 2874. It shall contain the names of all witnesses for whom a subpoena is required by the same party in the same cause who reside in one county (f). *Rev. Stat., chap. 158, secs. 2-3.*

SEC. 2875. It may, when the court or judge thereof so directs, require the witness to bring with him any book, writing or other thing under his control which he is bound by law to produce in evidence. *Civil Code, sec. 581.*

SEC. 2876. Where the attendance of a witness is required before the court, or on the trial of an issue ordered by it, or before a commissioner directed to take evidence, the subpoena shall be issued by the clerk on the request of either party. *Ib., sec. 582.*

SEC. 2877. Arbitrators, masters and commissioners may issue subpoenas for witnesses in all matters and proceedings depending before them respectively. *Ib., sec. 494, and Rev. Stat., chap. 48, sec. 14.*

SEC. 2878. Where the attendance of the witness is required for the purpose of giving his deposition, the subpoena shall be issued by an officer authorized to take the deposition. *Civil Code, sec. 583.*

SEC. 2879. The service of the subpoena is made by showing the original and stating the substance thereof to the witness. *Ib., sec. 584.*

SEC. 2880. A subpoena may be served by the sheriff, coroner or any constable of the county, whose return thereof shall be proof of the service. It may also be served by any person of full age, whose affidavit, indorsed thereon, shall be proof of the service; or the witness may acknowledge service in writing on the subpoena. *Ib., sec. 585.*

SEC. 2881. All witnesses shall be privileged from arrest in all cases except treason, felony or breach of the peace during their attendance on any court, and where their attendance is required by subpoena; and going to and returning from the place where they may be required to appear to testify, allowing one day for every twenty-five miles from their residence.

SEC. 2882. If any person who shall cause a witness to be arrested, knowing him to be in attendance as such, upon a subpoena, his suit shall be abated, and he shall be fined, at the discretion of the court from which the subpoena issued, in any sum not exceeding one hundred dollars. *Rev. Stat., chap. 158, secs. 10, 11.*

SEC. 2883. A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence or an adjoining county (g), nor to attend to give his deposition out of the county where he resides or where he may be when the subpoena is served on him, requiring his attendance within three days. *Civil Code, sec. 586.*

SEC. 2884. When the party causing any witness to be summoned shall have paid or tendered to such witness legal fees for travel and one day's attendance, at the time of summoning him, such delinquent witness shall be liable to such party for all damages sustained by reason of his non-attendance, unless he show sufficient cause to justify such absence. *Rev. Stat., chap. 58, sec. 9.*

(f) It is the duty of the clerk of the circuit court to embrace in one subpoena all the witnesses directed by one party to be summoned. But this rule is not absolutely mandatory, as where the party, after ordering a subpoena for witnesses, ascertains that it is necessary for him to have others summoned. *Meadows v. Rogers*, 17-361.

(g) But, in a criminal case, the attendance of a witness residing in any part of the state may be coerced without tender of fees. SEC. 2144.

SEC. 2885. Disobedience of a subpoena, or a refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully ordered, may be punished as a contempt of the court or officer by whom his attendance or testimony is required. *Civil Code, sec. 587.*

SEC. 2886. Where a witness is brought before a court for contempt for disobeying a subpoena, if it be shown that he concealed himself, or otherwise intentionally evaded the service of the subpoena, or, being served, failed to attend, without reasonable cause, the court may summarily order him to pay to the party on whose behalf he was summoned the costs occasioned to him by the disobedience of the subpoena, not exceeding twenty dollars, besides being liable for any damages (*) occasioned by the failure to attend.

SEC. 2887. Where a witness fails to attend in obedience to a subpoena, or conceals himself, or otherwise intentionally evades the service of the subpoena, the court or officer before whom his attendance was required may issue a warrant for arresting and bringing him before the court or officer, at a time and place to be fixed in the warrant, to give his testimony and answer for the contempt. If the warrant is not for immediately bringing the witness before the court or officer, a sum shall be fixed in which the witness may give bond, with surety, for his appearance; and, if no sum is fixed by the court or officer, it shall be one hundred dollars.

SEC. 2888. The punishment for the contempt mentioned in section 2885 shall be by fine not exceeding thirty dollars, and imprisonment not exceeding twenty-four hours. But in case of the refusal of a witness to testify or be sworn, or to give a deposition, he shall continue to be imprisoned so long as he refuses; and, if the court finally adjourns before he submits, he shall remain imprisoned until next term. The final disposition of the case in which he so refuses shall discharge him from imprisonment.

SEC. 2889. A witness so imprisoned or fined by an officer before whom his deposition is being taken may apply to the circuit judge, who shall have power to discharge him if it appears that his imprisonment is illegal.

SEC. 2890. Every warrant of commitment to prison issued by a court or officer pursuant to this chapter must specify particularly the cause of commitment; and every warrant to arrest or commit a witness must be directed to the sheriff of the county where he may be, and executed in the same manner as process from the court.

SEC. 2891. A person confined in any prison in this state for any other cause than a sentence for felony may, by order of court, be required to be produced on oral examination in the county where he is imprisoned; but in all other cases his examination must be taken by deposition.

SEC. 2892. While a prisoner's deposition is being taken he shall remain under the control of the officer having him in custody, who shall afford reasonable facilities for the taking of the deposition.

SEC. 2893. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county while going, returning or attending in obedience to a subpoena. *Civil Code, secs. 588-595.*

(*) But see SECS. 2883, 2884; and as bearing on the question of tender of fees to witnesses in civil cases, see SEC. 2144.

SEC. 2894. Any person subpoenaed to appear before any court of record or justice of the peace, to give evidence in any case brought before such court or justice, shall attend each and every term, or from time to time, until such case shall be decided, or such witness be discharged by the court or justice trying such case. *Act Jan. 2, 1845.*

SEC. 2895. When any cause shall be continued on account of the absence of a witness duly summoned, and the party for whom such witness was summoned shall make affidavit stating that such absent witness is material, and that he can not safely go to trial without his testimony, the court may award a writ directed to the sheriff of the proper county, commanding him to take the body of such witness, that he appear and testify in the cause at the next term thereafter; and the clerk shall issue such writ accordingly, and state therein the day on which the cause shall be set for trial as the day of appearance.

SEC. 2896. When any writ authorized by the preceding section shall be executed, the sheriff shall discharge such witness on his entering into recognizance, which such officer is authorized to take, in any sum not less than one hundred nor more than five thousand dollars, conditioned for his appearance and due attendance according to the writ. *Rev. Stat., chap. 158, secs. 14, 15.*

GENERAL RULES FOR THE EXAMINATION OF WITNESSES.

SEC. 2897. The party who begins the case must ordinarily exhaust his evidence before the other begins. But the order of proof shall be regulated by the court, so as to expedite the trial and enable the tribunal to obtain a clear view of the whole evidence (h).

SEC. 2898. The court shall exercise a reasonable control over the mode of interrogation, so as to make it rapid, distinct, as little annoying to the witness and as effective for the extraction of the truth as may be, but subject to this control, the parties may put such legal and pertinent questions as they may see fit. The court, however, may stop the production of further evidence on a particular point when the evidence upon it is already so full as to preclude reasonable doubt.

SEC. 2899. The examination of a witness by the party producing him is the direct examination; the examination of the same witness upon the same matter by the adverse party is the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise directs.

SEC. 2900. A question that suggests to the witness the answer which the examining party desires is a leading question. On the direct examination, leading questions are not allowed, except under special circumstances, making it appear that the interests of justice require it. On cross-examination, the adverse party may put leading questions; but, if he examines the witness on new matters, such examination is subject to the same rules as the direct examination.

SEC. 2901. The party producing a witness is not allowed to impeach his credit by evidence of bad character, unless it is in a case in which it was indis-

(h) It is within the discretion of the court to allow a plaintiff to introduce further evidence in chief in support of his action after the defendant has closed his testimony, and, unless the discretion is abused, it is not error. *Evans & Shinn v. Rudy*, 34—383.

pensible that the party should produce him ; but he may contradict him with other evidence, and by showing that he has made statements different from his present testimony.

SEC. 2902. A witness may be impeached by the party against whom he is produced, by contradictory evidence, by showing that he has made statements different from his present testimony, or by evidence that his general reputation for truth or immorality renders him unworthy of belief (i), but not by evidence of particular wrongful acts, except that it may be shown, by the examination of a witness, or record of a judgment, that he has been convicted of felony (j).

SEC. 2903. Before other evidence can be offered of the witness having made at another time a different statement, he must be inquired of concerning the same, with the circumstances of time and persons present, as correctly as the examining party can present them ; and, if it is in writing, it must be shown to the witness, and he allowed to explain it (*).

SEC. 2904. Evidence of the good character of a witness is inadmissible until his general reputation has been impeached.

SEC. 2905. A witness once examined can not be re-examined as to the same matter without leave of the court. But he may be re-examined as to any new matter upon which he has been examined by the adverse party. After the examination on both sides is concluded, the witness can not be recalled without leave of the court.

SEC. 2906. If either party require it, the judge may exclude from the court-room any witness of the adverse party not at the time under examination, so that he may not hear the testimony of the other witness (k).

SEC. 2907. A person present before a court or judicial officer may be compelled to testify in the same manner as if he were served with a subpoena.

SEC. 2908. The judge or juror may be called as a witness by either party ; but, in such cases, it is in the discretion of the court to suspend the trial and order it to take place before another judge or jury ; and where a party knows, at the time the jury are impaneled, that a juror is to be called by him as a witness, he shall then disclose it, and the juror shall be excluded from the jury.

SEC. 2909. Whenever a writing is shown to a witness, it may be inspected by the adverse party, and, if proved by the witness and allowed by the court, it must be read to the jury before his testimony is closed ; otherwise, it can not be read, unless the witness is recalled. *Civil Code, secs. 649-661.*

MODE OF TAKING THE TESTIMONY OF WITNESSES.

SEC. 2910. The testimony of witnesses is taken in three modes :

First. By affidavit.

Second. By deposition.

Third. By oral examination.

(i) The credibility of a witness, though his character for truth be impeached, is a question for the jury. *Mize v. State*, 36—653. See *Lawson v. State*, 32—220.

(j) A witness can not be impeached nor his testimony impaired by proving that he has been indicted for larceny. *Anderson v. State*, 34—257.

(*) See *Griffith v. State*, 37—324.

(k) A party who becomes a witness in a suit may be put under rule as other witnesses. *Randolph v. McCain*, 34—696.

SEC. 2911. An affidavit is a written declaration under oath, made without notice to the adverse party.

SEC. 2912. A deposition is a written declaration under oath, made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine; or, upon written interrogatories.

SEC. 2913. An oral examination is an examination in the presence of the tribunal which is to decide the fact, or to act upon it, the testimony being heard by the tribunal from the lips of the witness.

AFFIDAVIT.

SEC. 2914. An affidavit may be read to verify a pleading, to prove the service of a summons, notice or other process in an action, to obtain a provisional remedy, a stay of proceedings or a warning order, or upon a motion, and in any other case permitted by law. *Civil Code, secs. 596-600.*

SEC. 2915. In suits upon accounts, the affidavit of the plaintiff, duly taken and certified according to law that such account is just and correct, shall be sufficient to establish the same, unless the defendant shall, under oath, deny the correctness of the account, either in whole or in part; in which case the plaintiff shall be held to prove such part of his account as is thus denied by other evidence. *Act March 5, 1867, sec. 1.*

SEC. 2916. Where a provisional remedy is granted upon an affidavit, and a motion is made to discharge or vacate it, the party against whom it is granted may, by written notice to the party by whom it was obtained, or by an order or rule of the court, require the production of the person who made the affidavit for cross-examination; whereupon the party notified shall produce the affiant, within ten days, before an officer authorized to take depositions, at the time and place of which he shall give the adverse party three days' notice. If the affiant is not produced, his affidavit shall be suppressed; and, if produced, he may be examined by either party.

SEC. 2917. An affidavit may be made out of this state before a commissioner appointed by the governor of this state to take depositions, or before a judge of a court, mayor of a city, notary public, or justice of the peace, whose certificate shall be proof of the time and manner of its being made.

SEC. 2918. An affidavit may be made in this state before a judge of the court, justice of the peace, notary public or clerk of a court. *Civil Code, secs. 601-603.*

SEC. 2919. Every affidavit shall be subscribed (1) by the affiant, and the certificate of the officer before whom it is made shall be written separately, following the signature of the affiant. *Ib., sec. 605.*

DEPOSITIONS, MAY BE USED, WHEN.

SEC. 2920. Depositions may be used on the trial of all issues, and upon all motions in actions by equitable proceedings, except where the court otherwise directs on an issue tried by a jury.

(1) The requirement that the affidavit shall be subscribed by the affiant is merely directory. *Gill v. Ward, 23-16; Mahan v. Owen, Ib., 347.*

SEC. 2921. They may be used on the trial of all issues in any action in the following cases:

First. Where the witness does not reside in the county where the action is pending, or in an adjoining county, or is absent from the state, or is in the military service of the United States, or of this state.

Second. Where the witness is the governor, secretary of state, auditor or treasurer of this state, a judge or clerk of a court, a president, cashier, teller or clerk of a bank, a practicing physician, surgeon, or lawyer, or keeper, officer or guard of the penitentiary.

Third. Where, from age, infirmity or imprisonment, the witness is unable to attend court, or is dead.

Fourth. Where the witness resides thirty or more miles from the place where the court sits in which the action is pending, unless the witness is in attendance on the court.

SEC. 2922. A witness shall not be compelled to attend in court for oral examination where his deposition may be used, unless he has failed, when duly summoned, to appear and give his deposition.

SEC. 2923. Where it is made to appear, by the affidavit of the party and the written statement of his attorney, that the testimony of a witness is important, and that the just and proper effect of his testimony can not, in a reasonable degree, be obtained without an oral examination before the jury, the court may, at its discretion, order the personal attendance of the witness to be compelled, although such witness may otherwise be exempt from personal attendance by law.

SEC. 2924. The plaintiff may commence taking depositions immediately after the service of the summons, and the defendant after filing his answer.

SEC. 2925. A party may take the deposition of any witness *de bene esse*, which may be used under the circumstances prescribed in section 2921. *Ib.*, secs. 606-611.

Officers Authorized to Take.

SEC. 2926. Depositions taken in this state may be taken before any judge or clerk of a court of record, a justice of the peace, mayor of a city or notary public. Depositions may be taken out of this state before a commissioner appointed by the governor thereof, a judge of a court, a justice of the peace, mayor of a city, notary public or any person empowered by a commission, directed to him by consent of the parties, or by order of the court. *Ib.*, sec. 621, *as amended by act Dec. 18, 1874.*

SEC. 2927. The official character of any judge, justice of the peace or other judicial officer before whom any deposition may be taken within any of the United States or territories thereof, authenticated and proved by the certificate and seal of the clerk of any court of record within any county of the state or territory where such officer resides, certifying that such officer was an acting judge or justice of the peace, and duly commissioned as such at the time when the deposition was taken, shall be a sufficient authentication (m).

SEC. 2928. No such certificate shall be required to the official character of the officer before whom depositions may be taken within this state.

(m) See *Smith v. Van Gilder*, 26—527.

SEC. 2929. The official character of any such officer, taking depositions without the limits of the United States, shall be attested by the seal of state of the government in which the depositions or examinations were taken. *Rev. Stat., chap. 48, secs. 16-17.*

May be Taken Upon Notice.

SEC. 2930. Depositions shall be taken upon reasonable notice to the adverse party, or upon interrogatories.

SEC. 2931. The notice must be in writing, signed by the party giving it or his attorney, addressed to the party on whom it is to be served, and specify the time and place of taking the deposition and the action or proceeding in which it is to be used. *Civil Code, secs. 622-623.*

SEC. 2932. Where the notice is to be given to the adverse party, it may be served as the summons in the action is authorized to be served. *Ib., sec. 624, as amended 1871.*

SEC. 2933. If neither the adverse party nor his attorney of record (n) reside in the county where the suit is pending, the putting of such notice in the office of the clerk of such court shall be a sufficient notice. *Ib.*

SEC. 2934. A notice shall be deemed reasonable that allows one day for each thirty miles of distance which the party will have to travel, and one day for preparation where the distance is less than one hundred miles, and two days where it is more.

SEC. 2935. Where the distance exceeds fifty miles, and the usual mode of travel for the whole or part of the distance is by steamboat, railroad cars or other public conveyance, the time ordinarily required by such mode of travel, with the days given for preparation, shall be deemed sufficient in the notice.

SEC. 2936. When the distance is less than thirty miles, a notice which gives to the party a reasonable opportunity to be present shall be sufficient.

SEC. 2937. Where a notice has been given to take a deposition at the office of a person authorized to take the same, but the attendance of the witness can not be procured, owing to his age, infirmity or imprisonment, the taking of the deposition may be adjourned to the next day and to some other convenient place, a written notice of which shall be posted upon the front door of said office before noon of the day on which the deposition was to have been taken.

SEC. 2938. Where a notice has been given to take a deposition at the office of a person authorized to take the same, but, from any cause not mentioned in the last section, the deposition can not be taken at that office, an adjournment to the nearest convenient place shall be made, a written notice of which shall be posted upon the front door of said office for one hour before the deposition is commenced at the place to which the adjournment is made.

SEC. 2939. Where an adjournment has been made pursuant to either of the last two sections, an affidavit as to the cause thereof, with a copy of the notice, certified by the sheriff, constable or officer authorized to take the deposition, or sworn by a private person to have been posted upon the door as therein directed, shall accompany the deposition.

(n) Notices required in the progress of an action may be given to the party or his attorney. SEC. 5212, and see SEC. 2942.

SEC. 2940. A party to whom more than three days' notice to take a deposition out of the state is given, may, by notice to the adverse party or his attorney, served in one day after the service of the first notice, require the deposition to be taken upon interrogatories.

When and How Taken Upon Commission and Interrogatories.

SEC. 2941. The court, on motion of either party, may permit depositions to be taken upon interrogatories:

First. Where the ascertainment of a fact or the stating of an account is referred to a commissioner.

Second. Where the party against whom the depositions are to be read is absent from the state and has not appointed an agent or attorney in the county where the action is pending known to the party taking the deposition.

Third. Where the parties against whom the deposition is to be read are numerous and have not designated agents or attorneys residing in the county on whom notice may be served.

Fourth. In cases where an infant, lunatic or married woman is a party by the consent of the guardian or husband.

SEC. 2942. The interrogatories shall be filed in the clerk's office; and if the adverse party, his agent or attorney, resides in the same county, notice thereof shall be given to either of them; and, while they remain in the clerk's office, the adverse party may file cross-interrogatories. If cross-interrogatories are not filed, the clerk shall file the following:

First. Are you directly or indirectly interested in this action? and, if interested, explain the interest you have.

Second. Are all your statements in the foregoing answers made from your own personal knowledge? and, if not, do your answers show what are made from your personal knowledge, and what from information, and the source of that information?

Third. State every thing you know concerning the subject of this action favorable to either party.

SEC. 2943. The interrogatories shall remain in the clerk's office fifteen days; or, if notice is served as provided in the last section, ten days after service, unless the cross-interrogatories are sooner filed.

SEC. 2944. After remaining the due length of time in the clerk's office, one or more commissions, at the request of the party, shall be issued by the clerk, with copies of the interrogatories and cross-interrogatories annexed, authorizing the person to whom it may be directed to examine the witnesses on them, which commission may be directed, generally, "to any officer authorized to take depositions, in or out of this state." *Civil Code, secs. 625-633.*

SEC. 2945. Where a deposition is taken upon interrogatories, neither party, nor his agent or attorney, shall be present at the examination of the witness unless both parties are present or represented by an agent or attorney, or unless the opposite party, or his agent or attorney, has been seasonably notified of the time and place of taking the depositions, or the party attending has been notified by the opposite party to attend. *Ib., sec. 637.*

Duty of Officer Taking; Certificate, Etc.

SEC. 2946. Upon filing with an officer authorized to take depositions, a notice duly served, or a commission, with interrogatories, to take a deposition, it shall be the duty of such officer to issue his subpoena, requiring the witness whose deposition is required to appear, at a time and place to be named in the subpoena, for examination; and, if the witness fail to attend after being duly summoned, the officer may issue his warrant for arresting and bringing the witness before him to give testimony, and answer for the contempt of disobedience of the subpoena.

SEC. 2947. The officer before whom the deposition is taken shall decide, summarily, all objections to questions; but, in matters of doubt, shall permit the questions to be answered, noting the objection in the deposition. He shall have power to prevent insulting questions being put to a witness, and to stop a course of interrogation pursued unreasonably long, and for mere vexation and delay.

SEC. 2948. The statement of the witness must be written in the presence of the officer taking it, either by the witness or the officer. *Ib.*, secs. 634-636.

SEC. 2949. The certificate of the officer shall state the time and place of taking the deposition; that the witness was duly sworn before he gave his testimony, and that his testimony was written, read to and subscribed by him in the presence of the officer; and also state by whom it was written, and which of the parties, in person, or by agent or attorney, was present at the examination of the witness (o).

SEC. 2950. When the depositions are completed, they shall be sealed up by the officer, and directed to the clerk of the court in which the action is pending, with a note showing them to be depositions and the style of the case in which they were taken, and either delivered to the clerk or mailed to him by the officer taking them. Depositions taken out of the state, sealed and directed as above provided, may be delivered to the party taking the same, his agent or attorney, who may deliver them in the same manner and with the same effect as if delivered by the officer taking them. *Provided*, that the person or persons conveying or delivering the depositions take an oath that the same have not been opened by him, or by any other person, to his knowledge or belief. *Provided, further*, that when the depositions are taken before an officer of the county in which the action is pending, they may be delivered by such officer to the clerk or justice without being sealed or directed. *Ib.*, secs. 638, 639.

SEC. 2951. All exhibits produced to the officer taking such depositions, when proved or referred to by any witness, together with the commission and interrogatories, if any, shall be sealed up with the depositions. *Rev. Stat., chap. 48; sec. 18.*

SEC. 2952. When the officer taking depositions shall, in his certificate, state the place of residence of the witness, such statement shall be *prima facie* evidence of the fact. *Ib.*, sec. 20.

(o) There is no error in allowing an officer to amend his certificate of the taking of depositions, so as to conform to the facts, after it is filed in court. *Conger v. Cotton*, 37-286.

Publication of and Exceptions to.

SEC. 2953. All depositions shall be opened and published by the clerk at the time they are filed in his office, and no deposition shall be read on a trial unless before the commencement thereof it was filed with the papers of the case.

SEC. 2954. Exceptions to depositions shall be in writing, specifying the grounds of objection, filed with the papers of the case, and noted on the record.

SEC. 2955. No exception, other than to the competency of the witness, or to the relevancy or competency of the testimony, shall be regarded, unless filed and noted on the record before the commencement of the trial.

SEC. 2956. The court, on the motion of either party, shall decide upon the exceptions before the commencement of the trial.

SEC. 2957. Errors of the court, in its decisions upon exceptions to depositions, are waived, unless excepted to.

SEC. 2958. When the trial is by jury, the opening of the case to the jury shall be deemed the commencement thereof. *Civil Code, secs. 642-647.*

To be Used in Other States.

SEC. 2959. A party desiring to take depositions in this state, to be used in judicial proceedings in other states, may produce to a judge, justice of the peace or other officer authorized to take depositions in the county where the witnesses reside, a commission authorizing the taking of such depositions on a notice duly served; whereupon, it shall be the duty of the officer to issue a subpoena requiring the witnesses to attend at a specified time and place for examination; and, in case of their failure to attend or refusal to be sworn or to testify, they may be punished as provided in section 2888. *Ib., sec. 648, and Rev. Stat., chap. 48, sec. 14.*

PERPETUATION OF EVIDENCE.

SEC. 2960. A person desiring to perpetuate the testimony of a witness may present to the judge of the circuit court of the county in which the adverse party resides, or, if he be a non-resident, then of the county in which the petitioner resides, a petition, subscribed by the petitioner and verified by his affidavit, to the effect that he believes the statements thereof are true, stating:

First. That the petitioner expects to be a party to an action in a court of this state; also, the name, if known, of the adverse party, whether or not he is a resident of this state, and whether or not of full age.

Second. That the evidence of a witness, whose name and residence, together with the facts generally expected to be proved, shall be stated, is believed by the petitioner to be material for him.

Third. The obstacles preventing the action being immediately brought where the petitioner expects to be plaintiff.

SEC. 2961. The judge may thereupon, in his discretion, make an order for the examination of the witness, stating in said order the time and place and manner of taking said deposition, which petition and order shall be filed in the office of the clerk of the circuit court of the proper county; and, when the adverse party is a resident of this state, and has not been absent therefrom four months, said clerk shall issue a summons as in other cases.

SEC. 2962. If the adverse party be an infant, non-resident, or unknown, or has been absent from the state four months, the judge may order a guardian *ad litem* and attorney to be appointed to defend and cross-examine for the adverse party, and warning orders to be made, subject to all the rules and regulations in regard to the appointment of guardians *ad litem* and attorneys and the making of warning orders in other cases; and, where the foregoing provisions have been complied with, the petitioner may proceed to take the deposition of the witness in the manner prescribed by law.

SEC. 2963. The party seeking to perpetuate the testimony shall pay all costs incurred.

SEC. 2964. The deposition, when completed, together with the affidavits, order, notice and proof of service, shall be filed in the clerk's office of the proper county.

SEC. 2965. In the event of a trial between the persons named in the affidavit as expected parties, or their successors in interest, the deposition, taken as above prescribed, may be read by either party, where the witness is dead or insane, or, if alive and of sound mind, where his attendance for oral examination can not be required; and every part of it shall be subject to like objections as if taken pending the action.

SEC. 2966. Where the trial is not in the circuit court of the county in which the deposition is filed, a certified copy of it and of the affidavit, order, notice and proof of service may be read as evidence. *Civil Code, secs. 666-671.*

CHAPTER LX.

EXECUTION.

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SECTION 2967. An execution may issue upon any final judgment, order or decree of a court of record, for a liquidated sum of money, and for interest and costs, or for costs alone.

SEC. 2968. The form of an execution may be in substance as follows (†):

THE STATE OF ARKANSAS.

To the sheriff of ——— county, greeting:

You are commanded that of the estate of A. B. you cause to be made the sum of ——— dollars, which C. D., late in our court, recovered against him for debt, with interest thereon from the ——— day of ———, 18—, until paid; also, the sum of ——— dollars, which was adjudged to the said C. D., for his costs in that suit expended; and that you have said sums of money within sixty days to render to the said C. D. his debt, interest and costs aforesaid.

In witness, etc.

(†) An execution may be amended. *Bridewell v. Mooney*, 25—524; *Blanks v. Rector*, 24—496.

SEC. 2969. The form may be varied to suit each particular case. *Civil Code, secs. 672, 673.*

Direction and Return.

SEC. 2970. It may be directed to and executed in any county in this state without first procuring an order of the court for that purpose. *Rev. Stat., chap. 60, sec. 10.*

SEC. 2971. All executions shall be returnable in sixty days from their date.

SEC. 2972. If an execution be satisfied, the officer may return thereon, in substance, "satisfied," unless it be by the sale of property, when the fact must be stated.

SEC. 2973. If satisfied in part, he must state what part, and why the residue is not made.

SEC. 2974. If levied, and no sale has been had for the want of bidders, or no property has been found, he must state the fact.

SEC. 2975. If an execution is issued, and the plaintiff desires to take out another at his own proper costs, the clerk may issue the same, though the previous execution be not returned.

SEC. 2976. If it be returned in whole or in part not satisfied, a new one may issue.

SEC. 2977. On a judgment or decree against several, the execution must be joint. *Civil Code, secs. 673, 674.*

SEC. 2978. No execution shall issue on any judgment or decree, unless ordered by the court, until after the expiration of ten days from the rendition thereof. *Ib., sec. 675.*

SEC. 2979. An execution may be issued upon a judgment at any time until the collection of it is barred by the statute of limitations, although no execution may have been previously issued within a year and a day (a). *Ib., sec. 436.*

How Issued in Case of the Death of One or More of the Plaintiffs or Defendants (b).

SEC. 2980. The death of one or all the plaintiffs shall not prevent an execution being issued thereon; but on such execution the clerk shall indorse the death of such of them as are dead; and, if all be dead, the names of the personal representatives or last survivor, if the judgment passed to the personal representative, or the names of the survivor's heirs, if the judgment was for real property.

SEC. 2981. The sheriff, in acting upon an execution indorsed as provided in the last section, shall proceed as if the surviving plaintiff or plaintiffs, or the personal representatives or heirs, were the only plaintiffs in the execution, and take sale, stay and forthcoming bonds accordingly.

SEC. 2982. Before making the indorsements named above, an affidavit shall be filed with the clerk, by one of the plaintiffs, or personal representatives, or heirs, or their attorney, of the death; and that the persons named as such are the personal representatives or heirs, and, in the case of personal representatives,

(a) Executions can not issue on judgments before justices after five years. SEC. 4103.

(b) See SECS. 3928-3934, and SECS. 3039, 3040.

they shall file with the clerk a certificate of their qualification in the proper court of this state.

SEC. 2983. The death of part only of the defendants shall not prevent execution being issued, which, however, shall operate alone on the survivors and their property.

SEC. 2984. The defendant may move the court to quash an execution on the ground that the personal representative or heirs of a deceased plaintiff are not properly stated in the indorsement on the execution; and, during the vacation of the court, may obtain an injunction, upon its being made to appear that the persons named are not entitled to the judgment on which the execution was issued *Ib.*, *secs.* 437-441.

Duty of Clerk.

SEC. 2985. The clerk shall indorse upon every execution by him issued the debt, damages and costs (c) to be recovered, before the delivery of such execution to the officer by whom it is to be executed; and he shall keep a well-bound book, in which he shall enter an abstract of all executions issued by him, or out of his office, showing the date of such execution, the names of the parties, amount of debt, damages and costs, to what officer and county directed, the return, if any, and a reference to the book and page wherein the judgment, order or decree whereon such execution issued is entered.

SEC. 2986. He shall keep an index, in alphabetical order, to such abstract of executions, both by the names of the plaintiffs and defendants therein. *Rev. Stat.*, chap. 60, *secs.* 11, 12.

Duty of Sheriff.

SEC. 2987. Every sheriff, or other officer to whom any execution may be delivered, shall indorse thereon the hour, day of the month and year when it came to his hands; and, if two or more writs of execution come to the hands of the sheriff or other officer the same day, that which he first received shall have priority over the others, and be executed accordingly. *Ib.*, *sec.* 25.

Proceedings to Stay or Quash Execution Improperly Issued.

SEC. 2988. If any person against whom any execution may have been issued shall apply to the judge of the court out of which the execution or order of sale may have been issued, by petition verified by affidavit, setting forth good cause why such execution ought to be stayed, set aside or quashed, reasonable notice of such intended application being previously given to the adverse party, his agent or attorney of record, such judge shall thereupon hear the complaint; and, if it shall appear that such execution ought to be stayed, set aside or quashed, and the petitioner shall enter into a recognizance, with sufficient security, in such sum as may be reasonable, to be taken and approved by such judge, conditioned that if such application be determined against such petitioner, he will pay the debt, damages and costs to be recovered by such execution or order of sale, or surrender in execution his property liable to be

(c) It is his duty to indorse on every execution the fees due to each officer and any other person. SEC. 3292.

seized, taken and sold by such execution or order of sale, or that the sureties will do it for him, then such judge shall make an order for the stay of such execution or order of sale as aforesaid; but all the property, real and personal, bound by such execution or order of sale, shall remain bound as if no such stay had been granted.

SEC. 2989. On the presentation of a certified copy of such order to the officer having charge of any such execution or order of sale, he shall immediately return the same without further action.

SEC. 2990. Such judge shall return such petition and proceedings thereon, duly certified, to the court out of which the execution was issued or the order of sale made returnable, and the clerk of such court shall enter the same upon his docket, and the court shall hear and determine the same in a summary manner, according to right and justice, and may award a perpetual stay of or quash such execution or order of sale, or may order the execution or order of sale to be enforced. *Ib.*, *secs.* 70-72.

LIEN OF.

SEC. 2991. No execution shall be a lien on the property in any goods or chattels, or the rights or shares in any stock, or on any real estate, to which the lien of the judgment, order or decree does not extend or has been determined, but from the time such writ shall be delivered to the officer in the proper county to be executed (d). *Ib.*, *sec.* 24.

PROPERTY EXEMPT FROM EXECUTION (*).

SEC. 2992. The personal property of any resident of this state, who is not married or the head of a family, in specific articles to be selected by such resident, not exceeding in value the sum of two hundred dollars, in addition to his or her wearing apparel, shall be exempt from seizure on attachment, or sale

(d) See *Hanauer v. Caisey*, 26-352.

(*) Defendant does not waive exemption by buying at execution sale. *Parham v. McMurray*, 32-261. Nor by giving a delivery bond. *Jacks v. Bigham*, 36-481. Property can not be scheduled against a judgment in replevin. *Smith v. Ragsdale*, 36-297. A jury can not be impaneled to try a right of exemption. *Swope v. Ross*, 29-370. A garnisheed debtor of a tenant may claim an exemption as against landlord. *Ib.*

For decisions under the constitution of 1868, see *Frits v. Frits*, 32-327; *Gulledge v. Preddy*, *Ib.*, 433; *Worsham v. Freeman*, 34-55; *Klenk v. Noble*, 37-238; *Webb v. Davis*, 37-551; *Greenwood v. Maddox*, 27-648; *Norris v. Kidd*, 28-485; *Chambers v. Sallie*, 29-407; *Jackson v. Allen*, 30-110; *Moore v. Granger*, *Ib.*, 574; *Murray v. Rapley*, *Ib.*, 568; *Parham v. McMurray*, 32-261; *Greenwood v. Maddox*, 27-648.

Widow may claim homestead against heirs as well as against creditors. *Hoback v. Hoback*, 33-399. But must do so before decree in partition suit. *Ib.* Homestead is for equal benefit of widow and children. *Johnson v. Turner*, 29-280. Homestead not forfeited by fraudulent conveyance. *Bennett v. Hutson*, 33-762; *Turner v. Vaughn*, *Ib.*, 454. One claiming exemption must show that he is a resident of the state. *Donnelly v. Wheeler*, 34-111. Though he may be an alien. *McKenzie v. Murphy*, 24-155. As to debts created in a fiduciary capacity, see *Gilbert v. Nedy*, 35-24. Tenant in common entitled to homestead. *Greenwood v. Maddox*, 27-648; *Sudell v. Armor*, 35-49. And on his death the right descends to his widow and minor children. *Ward v. Mayfield*, 41-94. An agreement to waive a homestead at the time of contracting a debt is void. *Lindsay v. Merrill*, 36-545. Removal for temporary purpose is no abandonment. *Euper v. Alkire*, 37-283. A wife need not concur in alienation of homestead. *Klenk v. Noble*, 37-238. The owner may use the homestead for any business necessary for the support of his family, and may rent out part of it. *Ib.* A minor can not waive his homestead. *Alzheimer v. Davis*, *Ib.*, 316. The homestead law must be liberally construed. *St. Louis R. Co. v. Hart*, 38-112. An action for use and occupation is not *ex delicto*. *Ib.* A homestead may be subject to a vendor's lien. *Tunstall v. Jones*, 25-272. A plea of homestead good as against possessory action. *Hughes v. Watt*, 26-228. Domicile of wife and children follows that of husband. *Johnson v. Turner*, 29-280. A homestead held by equitable title is exempt. *Rockafellow v. Peay*, 40-69. Homestead must be occupied at time of levy. *Patrick v. Baxter*, 42-175. But see *Euper v. Alkire*, 37-283.

on execution, or other process from any court, issued for the collection of any debt by contract. *Provided*, that no property shall be exempt from execution for debts contracted for the purchase money therefor while in the hands of the vendee.

SEC. 2993. The personal property of any resident of this state, who is married or the head of a family, in specific articles to be selected by such resident, not exceeding in value the sum of five hundred dollars, in addition to his or her wearing apparel and that of his or her family, shall be exempt from seizure on attachment, or sale on execution, or other process from any court, on debt by contract.

SEC. 2994. The homestead of any resident of this state, who is married or the head of a family, shall not be subject to the lien of any judgment or decree of any court, or to sale under execution, or other process thereon, except such as may be rendered for the purchase money, or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys, for moneys collected by them, and other trustees of an express trust, for moneys due from them in their fiduciary capacity.

SEC. 2995. The homestead, outside any city, town or village, owned and occupied as a residence, shall consist of not exceeding one hundred and sixty acres of land, with the improvements thereon, to be selected by the owner. *Provided*, the same shall not exceed in value the sum of twenty-five hundred dollars, and in no event shall the homestead be reduced to less than eighty acres, without regard to value.

SEC. 2996. The homestead, in any city, town or village, owned and occupied as a residence, shall consist of not exceeding one acre of land, with the improvements thereon, to be selected by the owner. *Provided*, the same shall not exceed in value the sum of two thousand five hundred dollars, and in no event shall such homestead be reduced to less than one-quarter of an acre of land, without regard to value. *Art. IX, secs. 1-5, Const.*

SEC. 2997. It shall not be lawful to levy upon and sell, under any execution or decree, any improvement or right of pre-emption upon the public lands when the defendant in the execution resides upon or cultivates such lands (c). *Act Dec. 5, 1840.*

SEC. 2998. No property, whether real, personal or mixed, or effects, credits, choses in action, assets of any description, securities or moneys belonging to the state, either legally or equitably, or the title whereof may be in the state, shall be subject to judgment, decree, execution or sequestration, or be seized on or sold by virtue of any order, judgment, decree or process of any court whatever. *Act Jan. 19, 1855.*

SEC. 2999. No property, real or personal, belonging to the state, or any county, city, town, borough or other public or municipal corporation, regularly incorporated according to law, shall be levied upon or sold by virtue of any execution. *Rev. Stat., chap. 33, sec. 15.*

SEC. 3000. Whenever there shall be filed in the recorder's office of the proper county a description of the metes and bounds of any family graveyard

(c) Such improvement, when resided upon or cultivated by the defendant, is not subject to sale under execution, and need not be scheduled. *Healy v. Conner*, 40—352.

or public burial place, the recorder shall make a record of the same in the record of deeds, which shall be sufficient to exempt said land or burial place from sale on execution. *Act Jan. 21, 1861.*

PROPERTY SUBJECT TO EXECUTION.

SEC. 3001. The following described property shall be liable to be seized and sold under any execution upon any judgment, order or decree of a court of record:

First. All goods and chattels not herein exempted.

Second. All improvements on the public lands of the United States not exempted by section 2997.

Third. The rights and shares in the stock of any bank, insurance company or other incorporation.

Fourth. Any current gold and silver coin, which shall be returned as so much money collected, without exposing the same to sale.

Fifth. Any bill or other evidence of debt issued by any moneyed corporation of this state, or any other state, belonging to any person against whom an execution shall be issued, at the time such writ shall be delivered to the officer to be executed, or at any time thereafter.

Sixth. All real estate, whether patented or not, whereof the defendant, or any person for his use, was seized in law or equity on the day of rendition of the judgment, order or decree whereon execution issued, or at any time thereafter (f). *Rev. Stat., chap. 60, sec. 23.*

SEC. 3002. Every unexpired lease of land shall be subject to execution and sale as real estate; but shall not be subject to sale under any execution issued by a justice of the peace; neither shall an improvement on public lands be sold under an execution issued by a justice of the peace. *Rev. Stat., chap. 60, sec. 73.*

HOW SHARES OR STOCK IN CORPORATIONS LEVIED ON.

SEC. 3003. When an execution shall be issued against any shares or stock in any bank, insurance company or other corporation, it shall be the duty of the cashier, secretary or chief clerk thereof, upon the request of the officer having such execution, to furnish him with a certificate, under his hand, stating the number of rights or shares the defendant holds in such bank, company or incorporation, with the incumbrances thereon. *Ib., sec. 26.*

SEC. 3004. The officer obtaining such information may make a levy of such execution on such rights or shares by leaving a true copy of such writ with the cashier, secretary or chief clerk; and, if there be none, then with some

(f) The right of a mortgagor to redeem his estate is liable to be taken upon execution by judgment creditors. *State, use, etc., v. Lawson*, 6—269.

The estate of the mortgagee in land before foreclosure, or at least before entry, is not the subject of execution, though there has been a default, and the condition is forfeited. *Trapnall v. State Bank*, 18—53; *Harman v. May*, 40—146; *Meadow v. Wise*, 41—285.

A levy without a sale is not a satisfaction of the judgment. *Black v. Nettles*, 27—606. Plaintiff may release improper or excessive levy. *Ib.* A mortgagee has no interest subject to execution, but a vendee holding a bond for title has. *Young v. Mitchell*, 33—222; *Burr v. Robinson*, 25—277. Lands bought by wife can not be levied on to pay husband's debt. *Allen v. Hightower*, 21—316. Execution can not issue on a judgment against an executor as such. *Horner v. Hawks*, 22—572. But if lands are levied on in the life of the debtor, they may be sold after his death. *Barber v. Pray*, 31—392; *Hare v. Hall*, 41—372.

other officer of such bank, company or corporation, with the certificate of the officer making such levy that he levies upon and takes such rights or shares to satisfy such execution. *Ib.*, sec. 27.

EXECUTION DEFENDANT MAY SELECT PROPERTY TO BE LEVIED ON.

SEC. 3005. The person against whom any execution may be issued may select what property, real or personal, shall be sold to satisfy the same; and, if he give to the officer a list of the property so selected, sufficient to satisfy such execution, the officer shall levy upon such property, and no other, if it be sufficient, in his opinion, to satisfy such execution, and, if not, then upon such additional property as shall be sufficient. *Ib.*, sec. 28.

CLAIM AND ASCERTAINMENT OF EXEMPTED PROPERTY.

SEC. 3006. Whenever any resident of this state shall, upon the issue against him for the collection of any debt by contract of any execution or other process, of any attachment except specific attachment, against his property, desire to claim any of the exemptions provided for in article IX of the constitution of this state, he shall prepare a schedule, verified by affidavit, of all his property, including moneys, rights, credits and choses in action held by himself or others for him, and specifying the particular property which he claims as exempt under the provisions of said article, and after giving five days' notice, in writing, to the opposite party, his agent or attorney, shall file the same with the justice or clerk issuing such execution or other process or attachment; and the said justice or clerk shall thereupon issue a *supersedeas* staying any sale or further proceeding under such execution, or process, or attachment, against the property in such schedule described and claimed as exempted, and by returning the property to the defendant (g). *Provided*, that an appeal may be taken to the circuit court from any order or judgment rendered by the justice of the peace upon the filing of the affidavit and executing the bond required in other cases of appeal.

SEC. 3007. Upon application to such justice or clerk by the plaintiff in whose favor such execution, or process, or attachment, shall have been issued, the justice or clerk, as the case may be, shall forthwith appoint three disinterested appraisers, to be summoned and sworn by the officer levying the attachment, execution or process, who shall proceed at once to appraise the property so claimed as exempt, and the appraisement, signed by a majority of the appraisers, shall be returned with the writ.

SEC. 3008. If a majority of the appraisers shall decide that the full amount of the property in such schedule described and claimed as exempted is within the limit of valuation prescribed by the constitution, then the officer levying such attachment or execution, or enforcing other process, shall surrender the same to the defendant, and the costs of the proceeding shall be paid by the plaintiff making application for the appraisement. *Act March 28, 1871, sec. 1, as amended by act March 9, 1877.*

(g) Defendant must file a proper schedule and see that a *supersedeas* is issued. *Healy v. Conner*, 40—352.

A schedule of property which does not claim it as exempt, nor show that the party filing it is a resident of the state, is fatally defective, and will not protect the property from sale. *Guise v. State*, 41—249.

As to when *supersedeas* should be quashed, see *Patrick v. Baxter*, 42—175.

SEC. 3009. If the decision shall be that the property described exceeds in value the amount exempted by the constitution, then the justice or clerk shall revoke the *supersedeas* so far as concerns such items of the property described as the said appraisers may designate as in excess of the amount of exemption by the constitution provided for; and the costs of the proceeding shall be paid by the defendant in the action.

SEC. 3010. Said appraisers shall each receive as compensation for their services the sum of three dollars per day for each day's service rendered, not to exceed two days, such amount to be taxed in the costs of the proceeding.

SEC. 3011. When the schedule above provided for shall have been filed, the provisions of section 3021 shall not be considered as applying to the case of the execution or other final process stayed.

SEC. 3012. No indemnifying bond shall be received by the officer levying such execution or enforcing such final process; and if any officer shall, under the pretext of having received such a bond, undertake to sell the property in such schedule described, he shall be deemed guilty of a gross misdemeanor, and shall, upon conviction, be imprisoned in the county jail for a term of not less than one month nor to exceed two months, and shall be fined in a sum not less than one hundred nor more than five hundred dollars, and shall furthermore be liable upon his official bond to the defendant in twice the amount of damages by such defendant incurred. *Ib.*, *secs.* 1-3.

SEC. 3013. Either party shall have the right to appeal from the decision of the board of appraisers hereinbefore provided for; if the said board shall have been appointed by a justice of the peace, then the appeal shall be to the circuit court of the county upon presentation of a transcript, duly certified, of the attachment, execution or other process issued, and of the decision of the appraisers; if by the clerk of a court, then to the court by the clerk of which the board was appointed. *Ib.*, *sec.* 4, *as amended by act March 9, 1877.*

PROCEEDINGS WHERE EXECUTION IS LEVIED ON PARTNERSHIP PROPERTY.

SEC. 3014. Whenever a sheriff or other officer shall levy an execution upon property or effects held jointly or in partnership by the debtor in the execution with others, to satisfy the separate debt of such debtor, the sheriff or other officer shall not proceed to make sale thereof, except as hereinafter provided, if the person or persons, or any of them holding such joint or partnership interest with the debtor, shall assert an equitable or other claim thereto, and, in writing, notify the officer of the existence of such claim.

SEC. 3015. Where any such levy is made, the officer shall give notice thereof, in writing, to the other joint owners or partners, if resident in his county, or to the agent, if any, of any such joint owners or partners who are absent or non-resident; and, if such joint owners or partners shall thereafter, for the space of fifteen days, fail to give the officers notice of their claim, the officer shall then proceed to advertise and sell the property so levied upon.

SEC. 3016. When a claim is asserted by the joint owners or partners to the property levied upon, the officer shall not, by virtue of his levy, deprive the joint owners or partners of the possession of the property levied upon, except for the purpose of making an inventory thereof, and having the same appraised.

SEC. 3017. The officer shall proceed to have the property levied upon

appraised, as provided in section 3043. He shall return the inventory and appraisement, with the execution, to the office from which it issued; and, in his return, shall state all the facts connected with the levy by him, and the claims, if any, set up by the joint owner or owners.

SEC. 3018. The execution creditor shall have a lien upon the property levied upon, such as is given by law to executions in the hands of the officer, and which shall continue until the levy is disposed of.

SEC. 3019. Upon the execution being returned by the officer that he had levied the same upon the property in which the debtor was joint owner or partner, and that the same was claimed by the other joint owners or partners, the execution creditor may proceed by equitable proceedings to subject, to the satisfaction of his execution, the interest of the debtor so levied upon.

SEC. 3020. If such creditor, at the commencement of his action, or afterward, shall file an affidavit that he verily believes that the property levied upon will be removed from the county, or sold, or otherwise disposed of, with intent fraudulently to defeat his lien, the court, or judge thereof in vacation, or, if within the jurisdiction of a magistrate, then a justice of the peace, may make an order directing the officer to possess himself of the property so levied upon, unless bond, with approved security, shall be executed to the plaintiff in the execution, binding the obligors in the said bond to have the same forthcoming, in obedience to any order or judgment of the court in the action, which bond shall be taken by the officer and returned by him to the court in which the action is pending. *Civil Code, secs. 742-748.*

INDEMNIFYING BOND.

SEC. 3021. If an officer who levies, or is required to levy, an execution upon personal property, doubts whether it is subject to execution, he may give to the plaintiff therein, or his agent or attorney, notice that an indemnifying bond is required. Bond may, thereupon, be given by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors therein will indemnify him against the damage he may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages he may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and, thereupon, the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the circuit court of the county from which the execution issued.

SEC. 3022. If the bond mentioned in the last section is not given, the officer may refuse to levy the execution; or, if it had been levied, and the bond is not given in a reasonable time after it is required by the officer, he may restore the property to the person from whose possession it was taken, and the levy shall stand discharged.

SEC. 3023. Where property, for the sale of which the officer is indemnified, sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. That court may order such disposition or payment of the money to be made temporarily or absolutely as may be proper in respect to the rights of the parties interested.

SEC. 3024. The claimant or purchaser of any property, for the seizure or sale of which an indemnifying bond has been taken and returned by the officer, shall be barred of any action against the officer levying upon the property, if the surety was good when it was taken. And such claimant or purchaser may maintain an action upon the bond, and recover such damages as he may be entitled to. *Ib.*, secs. 723-726.

STAY.

Of Judgment (h).

SEC. 3025. The defendants, except in the cases herein otherwise provided (i), may, when there is no execution thereon in the hands of a collecting officer, stay any judgment or decree for money, for three months, before the clerk of the court entering up the judgment or decree, by giving an obligation, with good surety, to be approved by such officer, in substance, as follows:

"This day the defendant, A. B., together with C. D., his surety, came before me, as clerk of the circuit court, and undertook that they would satisfy and pay E. F. his judgment, including interest (if any) and costs, amounting to ———, rendered in his favor against the said A. B. by this court, within three months, with legal interest on the whole amount thereof from this date." *Ib.*, sec. 676.

Of Execution in Hands of Officer.

SEC. 3026. Any execution on a judgment or decree which could be stayed before such execution issued may, at any time before a sale of property under the same, be stayed for three months, by the defendant giving to the officer (j) acting under the same an obligation payable to the plaintiff, with good security, for the amount thereof, including interest, costs and half commission up to that time. The obligation may be in substance as follows:

"We, A. B., principal, and E. F., surety, do bind ourselves, three months after the date hereof, to pay C. D., the plaintiff in execution, the sum of ——— dollars, to bear interest from this date, being the amount of an execution which issued from the clerk's office of the ——— circuit court, on the ——— day of ——— 18—, in favor of the said C. D., for the sum of ——— dollars debt (or damages), ——— dollars interest, ——— dollars costs of suit, ——— dollars sheriff's half commission, amounting in the whole to the sum of ——— dollars aforesaid, against the said A. B.; and we, the said A. B. and E. F., his surety, have hereby stayed the same.

"Witness our hands this ——— day of ———, 18—."

SEC. 3027. An agreement to waive the right of stay, or any other legal agreement in relation to any judgment or decree, entered on the record among the orders of the court, shall be specifically enforced. In such case the proper indorsement shall be entered upon the execution by the clerk or justice.

SEC. 3028. No stay shall be allowed upon a judgment or decree against any

(h) The provisions of this chapter relating to stay of executions do not apply to justices' courts. For time and manner of staying execution upon judgment rendered by a justice, see SECS. 4088-4098.

(i) See SEC. 3028.

(j) The provisions of this section do not apply to executions issued by a justice. See SECS. 4088-4098.

collecting officer or attorney at law, or agent for a delinquency or default in executing or fulfilling the duties of his office or place, or failing to pay over money collected by him in such capacity, or against a principal by his surety, or of a debt due by obligation having the force of a judgment, or of a judgment or decree for specific property, or for the property or its value, or a judgment or decree enforcing a lien in favor of a vendor or mortgagee. In the cases mentioned in this section in which a stay is not allowed, the execution shall be so indorsed by the clerk. *Civil Code, secs. 677-679.*

FORTHCOMING BOND.

SEC. 3029. The owner of personal estate taken in execution may give to the officer levying on the same an obligation, with good surety, to have the property forthcoming at the time and place of sale, specifying therein each article of property and its value. The obligation may be in substance as follows:

"We, A. B., principal, and C. D., surety, do bind ourselves that the property mentioned in the following schedule and valuation, to wit: valued at ——— dollars (naming each article and its value), shall be forthcoming at ———, on the ——— day of ——— next, at the hour of twelve o'clock in the day.

"Witness our hands this ——— day of ———, 18—."

SEC. 3030. Upon the giving of such obligation the officer shall return the possession of the property so taken in execution to the defendant, to remain with him, at his own risk and expense, until the time specified for its delivery.

SEC. 3031. If the defendant shall fail to pay or stay the amount of the execution, and shall fail to deliver so much of the property specified in the forthcoming obligation, or other property in its place, as is sufficient to satisfy the execution and all costs and commissions, the officer shall return the execution and bond to the office whence the former issued, and indorse on the execution the levy, the giving of the bond, and the particular property which is not forthcoming, and the other facts.

SEC. 3032. The surety therein shall be liable only for the value of the property specified in the bond which is not forthcoming, with interest thereon from the date of the bond, and accruing costs.

SEC. 3033. If the property specified in the forthcoming bond is not of value sufficient to satisfy the execution and all costs and commissions, the proper officer may issue another execution, and credit the same with the value of the property specified in the bond.

SEC. 3034. An officer taking a forthcoming bond, who shall fail to return the same to the proper officer for twenty days after the failure to comply on the part of the defendant, shall, with his sureties, be liable to the plaintiff for the amount of the execution, costs and commission, and twenty per cent. thereon, to be recovered by action against any one or more of them, or their representatives. *Civil Code, secs. 680-682.*

BONDS HAVING THE EFFECT OF JUDGMENTS.

SEC. 3035. Every bond taken on the sale of property, under an order or decree in chancery, or on the sale of property under execution, and every stay bond and forthcoming bond shall be signed by the principal and sureties, and attested by the person taking the same, or some one in his presence.

SEC. 3036. A bond so taken shall be returned to the proper officer, with the report of the acts of the person taking it; and, if taken under execution, the latter must be returned with the bond.

SEC. 3037. All such bonds shall have the force and effect of a judgment, and on which an execution may issue, which execution shall be indorsed that no surety of any kind is to be taken.

SEC. 3038. The officer taking any of the bonds aforesaid, and his sureties, or their representatives, shall be jointly and severally liable to the person injured for any damages he may sustain by such officer failing to discharge his duty in the taking of such bond.

SEC. 3039. If one of several obligors or obligees in a bond having the force and effect of a judgment shall die before the same is satisfied, execution may issue on such bond in the name of the surviving obligees against the obligors or the survivor.

SEC. 3040. When all the obligees in such bond as is specified in the preceding section shall die, their personal representatives may, if such bond is not satisfied, sue out execution thereon, after its maturity, against the obligors, or if they are all dead, against their personal representatives; or, if only part be dead, against the survivor and the personal representatives of the deceased.

SEC. 3041. When a bond having the force and effect of a judgment is quashed, a new execution may issue on the original judgment at the instance of the plaintiff, in the same manner as if such bond had never been given. *Civil Code, secs. 685-689.*

ANY PERSON CLAIMING THE PROPERTY MAY GIVE BOND—PROCEEDINGS (k).

SEC. 3042. The sale of personal property upon which an execution is levied shall be suspended at the instance of any person, other than the defendant in the execution, claiming the property, who shall execute, with one or more sureties, sufficient for double its value, a bond to the plaintiff in the execution, to the effect that, if it shall be adjudged that the property, or any part of it, is subject to the execution, he will pay to the plaintiff the value of the property so subject, and ten per cent. thereon, not exceeding the amount due on the execution, and ten per cent. thereon.

SEC. 3043. For the purpose of taking the bond mentioned in the last section, the officer shall select three disinterested house-keepers, and administer to them an oath to make a fair appraisalment of each article of the property, whose appraisalment, in writing, shall be recited in the bond.

SEC. 3044. The bond, with the appraisalment annexed thereto, shall be returned to the circuit court of the county in which the levy was made.

(k) This proceeding does not apply to executions issued by justices of the peace. SEC. 4122.

SEC. 3045. The party to whom the bond is executed may move the court to which it is returned for a judgment thereon against all or any of the obligors, or their representatives, having given to them ten days' notice of the motion. The court shall direct a jury to be impaneled, and may cause such issues to be tried as it may prescribe, and direct which party shall be considered plaintiff in the issue. If the property, or any part of it, is found subject to the execution, judgment shall be rendered in favor of the plaintiff therein for the value of the property so subject, and ten per cent. thereon, not exceeding the amount due on the execution, and ten per cent. thereon. An execution may be issued upon the judgment forthwith, on which the same indorsement shall be made as on the execution in virtue of which the property had been seized.

SEC. 3046. Upon the trial of the motion, either party may object that the property was not fairly appraised; and, thereupon, the jury trying the facts shall hear evidence respecting, and find the value of, the property.

SEC. 3047. The giving of the bond mentioned in section 3042 shall not discharge the levy of the execution upon the property claimed. But the officer may leave it, subject to the lien of the levy, with the person in whose possession it was found, pending the proceeding on the bond, and may, in the meantime, proceed with the execution against any other property of the defendant. *Ib.*, *secs.* 727-732.

HOURS OF JUDICIAL SALES.

SEC. 3048. All property taken in execution by any officer shall be exposed to sale on the day for which it was advertised, between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, publicly, by auction, for ready money, except when otherwise provided by law (1), and the highest bidder shall be the purchaser. *Rev. Stat.*, *chap.* 60, *sec.* 48.

SALES OF REAL ESTATE (m).

SEC. 3049. The time and place of sale of real property upon execution, or by virtue of a judgment or order of sale, must be advertised for at least twenty days next before the day of sale, by posting printed advertisements at the court-house door and five other public places in the county in which the sale is to be made, one of which is to be upon the premises to be sold, and by publishing the same for at least two insertions before the day of sale in a weekly newspaper published in the county, if one there be.

(1) As to sale under execution from a justice's court, see SEC. 4115. As to sales made by order of court, see SEC. 5171. As to sales under mortgages, see SECs. 4759-4763.

All sales made by order of court must be on a credit. *Welch v. Hicks*, 27-292.

(m) Mistake in advertisement will not avoid the sale as against an innocent purchaser. *Files v. Harbison*, 21-307. Nor will the want of an advertisement. *Newton v. State Bank*, 22-19; *Youngblood v. Cunningham*, 38-571. When plaintiff buys he is not an innocent purchaser. *Hill v. Coolidge*, 33-621; *Williams v. Melroy*, 34-85.

For irregularities the sale may be set aside. *Files v. Harbison*, 29-307. Mere inadequacy of price will not invalidate the sale. *Newton v. State Bank*, 22-19; *Pindall v. Trevor*, 30-249. Where there has been no fair competition, equity will annul the sale. *Bennett v. Hutson*, 33-762. The practice of selling lands under execution that have been fraudulently conveyed should not be encouraged. *Apperson v. Burgett*, *Ib.*, 328. The sheriff need not sell in forty-acre tracts unless so directed. *Field v. Dortch*, 34-399; *Youngblood v. Cunningham*, 38-571; *Randolph v. Thomas*, 23-69. One who induces another to purchase his land under execution can not afterward allege irregularities in the sale. *Youngblood v. Cunningham*, 38-571; *Turner v. Watkins*, 31-429. A sale after the return day is void. *Hightower v. Handlen*, 27-20. And so when the execution is for much more than is due on the judgment. *Ib.*

SEC. 3050. The sale of real estate shall be made at the court-house door, unless, at the request of the defendant who owns the land, the officer shall appoint the sale upon the premises.

SEC. 3051. Where there has been one failure to sell for want of bidders, the officer may appoint the sale at the court-house door, or on the premises, as he shall deem most likely to secure a fair sale. *Civil Code, sec. 690.*

SEC. 3052. In all sales of real estate under execution, when the tract or tracts to be sold contain more than forty acres, the same shall be divided, as the owner or owners may direct, into lots containing not more than forty nor less than twenty acres; and the officer whose duty it may be to sell said property shall begin at one corner of said real estate, to be designated in the notice published by him advertising said sale, and proceed to sell in such tracts of not more than forty nor less than twenty acres each, of contiguous territory, until the whole of said tract or tracts be disposed of, unless the execution shall be sooner satisfied.

SEC. 3053. In all cases where the corner at which the sale is to commence has not been designated in accordance with the preceding section, the officer whose duty it may be to sell said tract or tracts of land shall commence at the north-east corner. *Act July 18, 1868.*

Certificate of Purchase.

SEC. 3054. The sheriff shall give the purchaser of any real property sold upon execution a certificate of sale, in which the property sold shall be described, and the price for which it sold stated. Such certificate shall be evidence of the purchase at the price stated, and the officer shall return a duplicate thereof with the execution. No conveyance shall be made to the purchaser, nor the possession delivered to him, until the time for redeeming has expired; and, if said property is redeemed by the defendant, as provided in this chapter, the sale and certificate of purchase shall be null and void. *Civil Code, sec. 693.*

SALES OF PERSONAL PROPERTY.

SEC. 3055. The time and place of sale of personal property shall be advertised for at least ten days, by posting written or printed notices at three of the most public places in the vicinity of the place of sale. *Rev. Stat., chap. 60, sec. 36, and Civil Code, sec. 690.*

WHEN SALES TO BE MADE ON CREDIT (n).

SEC. 3056. In all cases where the right to stay the execution exists and is not exercised, sales under the execution shall be on a credit of three months, upon the purchaser giving bond and good security to the plaintiff in the execution for the payment of the sale money, bearing interest from date. The bond may be in substance as follows:

"A. B., principal, and C. D., surety, do bind ourselves to pay E. F., within three months from the date hereof, the sum of —— dollars, with interest thereon from this date, being the purchase money (here set out the several arti-

(n) See note to SEC. 3048.

cles of property so purchased, with the price of each), which was this day sold by G. H., sheriff of ——— county, in satisfaction of an execution which issued from the office of the clerk of the ——— circuit court, on the ——— day of ———, in favor of the said E. F., against M. O., for the sum of ——— dollars debt (or damages), with interest and costs.

“Given under our hands this ——— day of ———, 18—” (o).

SEC. 3057. When property sold on a credit shall sell for more than will satisfy the execution, costs and commission, the officer making the sale shall take a bond, payable to the defendant, the owner of the property, for the excess, similar in every other respect to that directed in the preceding section, to be taken to the plaintiff, and to have like force and effect, and on which the like proceedings may be had. If the property is sold for cash in hand, any excess over satisfying the execution, and charges and commissions, shall be paid over by the officer to the defendant whose property is sold. *Civil Code, secs. 683, 684.*

BIDDER FAILING TO PAY—PROCEEDINGS.

SEC. 3058. If any person shall refuse to pay the amount bid for any property struck off to him, the officer making the sale may again sell such property to the highest bidder, and, if any loss shall be occasioned thereby, the officer may recover such loss by motion before any court or justice of the peace.

SEC. 3059. Such court or justice shall proceed in a summary manner, and give judgment and award execution therefor forthwith; and the same proceedings may be had against any subsequent purchaser who shall refuse to pay, and the officer may forever thereafter refuse the bid of the person so refusing to pay for property purchased by him. *Rev. Stat., chap. 60, secs. 49–50.*

OFFICERS AND DEPUTIES NOT TO BID.

SEC. 3060. No officer to whom any execution may be directed, or any of his deputies, or any person for them, shall purchase any real estate, goods and chattels or other effects, at any sale made by virtue of any such execution; and all purchases so made shall be void. *Rev. Stat., chap. 60, sec. 51.*

LIABILITY OF OFFICER FAILING TO EXECUTE, ETC.

SEC. 3061. If any officer to whom any execution shall be delivered shall neglect or refuse to execute or levy the same according to law, or shall take in execution any property, or if any property be delivered to him by any person against whom an execution may have been issued, and such officer shall neglect or refuse to make sale of the property so taken or delivered according to law, or if any such officer shall not return any such execution on or before the return day therein specified, or shall make a false return thereof, then, and in any of the cases aforesaid, each officer shall be liable and bound to pay the whole amount of money in such execution specified, or thereon indorsed and directed to be levied; and it shall be the duty of the clerk of the court from which any execution may be issued to indorse thereon the time when such execution was returned. *Id., sec. 62.*

(o) This section does not apply to sales made by constables on executions issued from a justice. SEC. 4115.

SEC. 3062. If such officer shall not, on the return of any execution, or at the time the same ought to be returned, have the money which he may have become liable to pay as aforesaid, and pay the same over according to the command of the writ, any person aggrieved thereby may have his action against the officer and his securities upon his official bond. *Ib.*, sec. 63.

SEC. 3063. If any officer sell any property under any execution, whether he received payment therefor or not, or shall make the money in any execution specified or thereon indorsed, and directed to be levied, or on any part thereof, and shall not have the amount of such sales, or the money so made, before the court, and pay over the same according to law, he shall be liable to pay the whole amount of such sale, or money by him made, to the person entitled thereto, with lawful interest thereon, and damages in addition, at the rate of ten per centum per month, to be computed from the time when the execution is made returnable, until the whole be paid, to be recovered in an action against such officer and his securities on his official bond; or the party aggrieved may proceed against such officer by motion before the court in which such writ is returnable, in a summary manner, ten days' previous notice of such intended motion being given, on which motion the court shall render judgment for the amount which ought to have been paid, with interest and damages as aforesaid, and award execution thereon (p). *Ib.*, sec. 64, and *Civil Code*, sec. 479.

SEC. 3064. The proceedings against any officer by motion, in the manner prescribed in the preceding section, shall not be construed to exempt the securities of such officer from liability. *Rev. Stat.*, chap. 60, sec. 65.

SEC. 3065. It shall be the duty of every officer to whom any execution may be directed, issued on any judgment recovered on motion according to the provisions of section 3063, to execute the same within fifteen days after it shall be delivered to him; and such officer shall be subject to the like penalties and liabilities for every default therein as on other executions. *Ib.*, sec. 66.

SEC. 3066. If any sheriff, or other officer to whom any execution may be legally directed, shall refuse to receive such execution, and execute the same according to law, such officer shall be deemed guilty of a misdemeanor in office, and shall also be liable to the party aggrieved for the amount of money specified in such execution, to be recovered against him and his securities on his official bond. *Ib.*, sec. 67.

REDEMPTION.

SEC. 3067. When any real estate, or any interest therein, is sold under execution, the same may be redeemed by the debtor from the purchaser, or his vendees, or the personal representatives of either, within twelve months thereafter.

SEC. 3068. The debtor may, at any time within twelve months, pay to the clerk of the court where the execution issued the purchase money, with fifteen per cent. per annum, and all lawful charges, and take his receipt therefor. Such money shall be held by the clerk for the use of the purchaser, and he shall be responsible upon his official bond therefor. Such clerk shall indorse upon the execution book that such redemption has been made.

(p) A summary judgment may be obtained against the sheriff, and his sureties for like causes. See chap. 89.

SEC. 3069. At any time before the expiration of twelve months from the sale of any land under the provisions of this chapter, which has not been redeemed, any judgment creditor may redeem the same in the manner following: Such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer, and pay to said officer the amount for which said premises were sold, and fifteen per cent. per annum thereon from the date of such sale, and all charges thereon, for the use of the purchaser, and shall offer to credit his execution with a sum at least equal to ten per cent. of the amount for which said land sold, which offer shall be regarded as his bid; all of which shall be indorsed upon said execution, and a statement thereof filed with the execution upon which the land was sold; whereupon the clerk shall indorse in the proper place upon the execution book that such creditor has bid for the redemption of such property, which shall be dated, and may be in substance as follows:

"A. B., a judgment creditor, bids ——— dollars for the redemption of the property sold on this execution."

SEC. 3070. Unless the purchaser, within thirty days from the filing of the statement and the making of the indorsement mentioned in the preceding section, pay to the officer the amount so bid by the judgment creditor, the same shall operate as a redemption of said property by such judgment creditor, and he shall succeed to all the rights and liabilities of such purchaser. But if such purchaser shall pay to such officer, within the time allowed, the amount so bid by the judgment creditor, it shall bar such redemption; and the right of redemption of such judgment creditor as against the purchaser, or any one redeeming from him, shall be forever foreclosed. But if the purchaser shall fail to pay over to the officer the amount of such bid, as provided in this section, the officer shall pay over to the purchaser the amount so paid by the judgment creditor, and credit the execution of the judgment creditor with the amount so bid by him, after deducting costs and commissions, and shall execute to him a certificate of sale, in which shall be included, as the price paid, the amount paid to the purchaser and the amount of the bid of such judgment creditor; and such judgment creditor shall, for all purposes of this chapter, be regarded as the purchaser of said property, at the price mentioned in the certificate to him, and any other judgment creditor may in like manner redeem from him, or each succeeding judgment creditor who may redeem under the provisions of this section; but no such redemption shall be allowed after twelve months from the day of the original sale.

SEC. 3071. If any purchaser shall pay the amount bid by the judgment creditor, the officer shall pay the same to such judgment creditor, together with the amount paid by such judgment creditor to the officer. The right of redemption shall be in the order of priority of judgment; but if any judgment creditor shall, for thirty days after a sale or redemption upon a judgment prior to his, fail to pay off prior bids, and bid for the redemption of such property, as provided in this chapter, he shall be deemed to have waived his priority as against others who have complied with the provisions of this chapter. *Civil Code, secs. 691, 692, 694, 695, 696.*

SEC. 3072. Sections 3067, 3068, 3069, 3070 and 3071 apply to all sales of

real estate made under decrees of chancery courts in the same manner they do to sales under executions at law (*). *Act March 4, 1875.*

OFFICERS' CONVEYANCE.

Of Goods and Chattels.

SEC. 3073. When the purchaser of any goods and chattels shall pay the purchase money, or, if the sale was on credit, shall execute bond and security for the purchase money as required by law, the officer selling the same shall deliver him such property, and, if desired, shall execute an instrument in writing, at the expense of the purchaser, testifying the sale and consideration, and conveying to such purchaser all the right, title and interest which the debtor had in and to the property sold, on the day the execution was delivered (q).

Of Shares in Corporations.

SEC. 3074. When any rights or shares in any bank, company or corporation shall be sold, the officer making such sale shall execute an instrument in writing, to be drawn at the expense of the purchaser, reciting the sale and payment of the consideration, and conveying to the purchaser all the right, title and interest which the defendant had in and to such rights and shares, and shall also leave with the cashier, secretary, chief clerk, or, if there be none, then with any other officer of such bank, company or corporation, a copy of the execution and his return thereto; and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such company, as such debtor was entitled to.

Of Real Estate.

SEC. 3075. After the time for redemption has expired, the sheriff, or his successor, shall convey the property sold under the provisions of this chapter, by deed, to the person entitled thereto, reciting the names of the parties to the execution, the date when issued, the date of the judgment, order or decree, the time, place and manner of sale, and other particulars recited in the execution, certificate of sale and proceedings in redemption, if any, which recitals shall be evidence of the facts therein stated. *Rev. Stat., chap. 60, secs. 52-54, and Civil Code, sec. 697.*

SEC. 3076. The officer who shall sell any improvement on the public lands of the United States shall, at the expense of the purchaser, execute an instrument in writing, reciting the sale and payment of the purchase money, describing the improvements, and conveying to the purchaser all the right, title, interest and claim that the debtor had in such improvement at the time execution was levied thereon. *Rev. Stat., chap. 60, sec. 55.*

SEC. 3077. Every officer executing a deed for land, tenements and hereditaments sold under execution shall acknowledge the same before the circuit court

(*) SEC SECS. 4759, 5169-5171.

(q) A sale of cattle running at large is void. *Rowan v. Refeld*, 31-648. And so of goods not present at the sale. *Kennedy v. Clayton*, 29-270. Any one in possession may contest the validity of the sale. *Ib.* One purchasing a safe under execution is not entitled to its contents. *Ray v. Light*, 34-421.

of the county in which the estate is situate, or before any officer authorized by the laws of this state to take the acknowledgment or proof of deeds of conveyance.

SEC. 3078. If such officer die or leave the state, resign or be removed from office before making such acknowledgment, such deed may be proved before such court, or before any officer authorized to take the acknowledgment or proof of deeds. *Ib.*, sec. 56, and act Jan., 1, 1855.

SEC. 3079. When the deed is acknowledged or proven before the court, the clerk shall indorse upon such deed a certificate of the acknowledgment or proof, under the seal of the court, and shall make an entry in the minutes of such court of such acknowledgment, with the names of the parties to the suit and a description of the property thereby conveyed.

SEC. 3080. Every deed so executed, acknowledged or proved shall be recorded as other conveyances of land, and thereafter such deed, or a copy thereof, or of the record, certified by the recorder, shall be received in evidence, without further proof of the execution thereof. *Rev. Stat.*, chap. 60, secs. 57, 58.

OFFICER'S TERM EXPIRING.

SEC. 3081. Where an officer shall have levied upon any goods and chattels, or real estate, or other effects, by virtue of any execution, and the term of service of such officer shall expire and be determined before the sale thereof, such officer shall nevertheless have power to do and perform all things in relation to such execution and the sale of such property, to all intents and purposes, as if his term of service had not expired; and he and his securities shall be subject to the like penalties, actions, proceedings and judgments for neglect, misconduct or failure therein, as if he had still continued in office. *Rev. Stat.*, chap. 60, sec. 59.

SEC. 3082. When any officer shall die or be removed from office, or otherwise disqualified from acting, after having taken in execution any goods and chattels, real estate, shares, or other effects, and before sale thereof, the sheriff or coroner then in office shall proceed thereon, and do and perform all things remaining to be done and performed in relation to such execution and the sale of such property, and in making and executing deeds and conveyances therefor, in the same manner and with the like effect as the officer so deceased, removed from office or disqualified, could have done. *Ib.*, sec. 60.

SEC. 3083. When any officer shall die, be removed from office or disqualified after the sale of any property, and before executing a conveyance therefor, the purchaser may petition the court (r) out of which the execution issued, stating the facts, and if he satisfy the court that the purchase money has been paid, the court shall order the sheriff then in office to execute and acknowledge a deed to the purchaser, reciting the facts, which deed shall be executed accordingly, and shall have the same effect, to all intents and purposes, as if made by the officer so deceased, removed from office or disqualified. *Ib.*, sec. 61.

(r) It is the duty of the sheriff to make deed for lands sold by his predecessor. SEC. 3075.

PROCEEDINGS BY DISCOVERY TO ENFORCE EXECUTION.

SEC. 3084. After an execution of *fiery facias*, directed to the county in which the judgment was rendered, or to the county of the defendant's residence, is returned by the proper officer, either as to the whole or part thereof, in substance, no property found to satisfy the same, the plaintiff in the execution may institute an action, by equitable proceedings, in the court from which the execution issued, or in the court of any county in which the defendant resides or is summoned, for the discovery of any money, chose in action, equitable or legal interest, and all other property to which the defendant is entitled, and for subjecting the same to the satisfaction of the judgment; and in such actions, persons indebted to the defendant in the execution, or holding the money or property in which he has an interest, or holding the evidences or securities for the same, may be also made defendants.

SEC. 3085. The answers of all the defendants shall be verified by their own oath, and not by that of an agent or attorney, and the court shall enforce full and explicit discoveries in such answers by attachment.

SEC. 3086. In the actions mentioned in the preceding sections, the plaintiff may have an attachment against the property of the defendant in the execution, similar to the general attachments provided for in chapter IX, without either the affidavit or bond therein required.

SEC. 3087. A lien shall be created upon the property of the defendant by the levy of the attachment, or service of the summons with the object of the action indorsed thereon, on the person holding or controlling his property.

SEC. 3088. The court shall enforce the surrender of the money, or security therefor, or of any other property of the defendant in the execution which may be discovered in the action, and, for this purpose, may commit to jail any defendant or garnishee failing or refusing to make such surrender until it shall be done, or the court is satisfied that it is out of his power to do so. *Civil Code, secs. 473-477.*

EXECUTION AGAINST CORPORATIONS.

SEC. 3089. The first process upon the judgment against any private corporation shall be a *fiery facias*, which the sheriff or other officer shall levy on the moneys, goods and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases.

SEC. 3090. If the sheriff or other officer shall return upon any such writ of *fiery facias* that no goods and chattels, lands and tenements, can be found whereon to levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs, the circuit court shall, on the application of the plaintiff, or his attorney, issue a writ of attachment against the rights and credits of such corporation, reciting the judgment, execution and return, and directed to the sheriff of the proper county.

SEC. 3091. Such attachment shall be executed by summoning, as garnishee, any person having any moneys or effects belonging to such corporation, and any debtor to such corporation, who may be found within the county, to appear before the circuit court at the return of such writ, and then and there

answer touching any moneys or effects of such corporation in his hands, or any debt he may owe to the same.

SEC. 3092. From the time of making such service, all moneys and effects due and owing, payable or belonging to such corporation, shall be bound until the judgment is satisfied; and no payment made thereafter to such corporation, or other disposition of any debts, moneys or effects so attached, shall be credited to the garnishee making the same, nor shall the stock owned by such person in such corporation be allowed as a set-off.

SEC. 3093. Proceedings against garnishees, under the provisions of this act shall be the same as against the garnishees summoned in the case of absent and absconding debtors; but no judgment shall be rendered against him for any debt to become due at a future day, until after the same shall become due.

SEC. 3094. For all moneys paid by any garnishee, under the provisions of this act, he shall have credit against the corporation to whom it is due.

SEC. 3095. If a sufficient sum be not made to satisfy such judgment and costs, other writs of attachment may be issued as aforesaid, from time to time, until the whole is satisfied.

SEC. 3096. If any money remain in the hands of the officer, after satisfying the judgment and all costs, he shall pay the same to the corporation, or its order. *Act Jan. 11, 1843, secs. 7-14.*

CHAPTER LXI.

EXECUTIVE DEPARTMENT (*).

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- I. GENERAL PROVISIONS.—Sec. 3097.
 II. GOVERNOR.—Sec. 3099.
 III. SECRETARY OF STATE.—Sec. 3108.
 IV. AUDITOR.—Sec. 3148.
 V. TREASURER.—Sec. 3185.
 VI. ATTORNEY-GENERAL.—Sec. 3217.
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I.—GENERAL PROVISIONS.

SECTION 3097. The executive department of this state shall consist of a governor, secretary of state, treasurer of state, auditor of state and attorney-general; all of whom shall keep their offices in person at the seat of government, and hold their offices for the term of two years, and until their successors are elected and qualified; and the general assembly may provide by law for the establishment of the office of commissioner of state lands (a). *Art. VI, sec. 1, Const.*

SEC. 3098. The governor, secretary of state, treasurer of state, auditor of state and attorney-general shall be elected by the qualified electors of the state at large, at the time and places of voting for members of the general assembly; the returns of each election therefor shall be sealed up separately and transmitted to the seat of government by the returning officers, and directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish the votes cast and given for each of the respective

(*) The following references are made to powers and duties of officers of the executive department, imposed by statutes found in other chapters:

The governor is a member and president of the board of trustees of the Arkansas Industrial University. SECS. 3666, 3668.

The governor and secretary of state are members of the board of commissioners of the common school fund. SEC. 6134.

The governor, secretary of state and auditor are constituted a board of railroad commissioners. SEC. 5647.

The governor, auditor and secretary of state determine the grades of cities. SEC. 726.

The governor, secretary of state and attorney-general constitute a board of commissioners for the management of the penitentiary. SEC. 4871.

The governor, auditor and treasurer are the commissioners to superintend the letting of public contracts. SEC. 5362.

The state treasurer is *ex officio* a member and treasurer of board of trustees for the deaf-mute institute. SEC. 2480.

For powers of auditor as insurance commissioner, see chap. 83.

(a) See *Sched., Const., sec. 24*. For election, term of office, powers and duties of commissioner of state lands, see chap. 93.

officers hereinbefore mentioned, in the presence of both houses of the general assembly. The person having the highest number of votes for each of the respective offices shall be declared duly elected thereto; but if two or more shall be equal and highest in votes for the same office, one of them shall be chosen by the joint vote of both houses of the general assembly, and a majority of all the members elected shall be necessary to a choice (*). *Art. VI, sec. 3, Const.*

II.—GOVERNOR.

SECTION

3099. Supreme executive power vested in.
 3100. To keep and use officially a seal of the state.
 3101. When president of senate to succeed to powers, duties, etc., of.
 3102. When office of, to be filled by speaker of house of representatives.

SECTION

3103. To approve bonds of auditor and treasurer.
 3104. To cause official reports to be printed.
 3105. State to furnish a mansion.
 3106. Until mansion erected or purchased, governor may rent.
 3107. Rent of mansion, how paid.

SECTION 3099. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "the governor of the State of Arkansas." *Art. VI, sec. 2, Const.*

SEC. 3100. A seal of the state shall be kept by the governor, used by him officially and called the "Great Seal of the State of Arkansas" (*). *Ib., sec. 9.*

SEC. 3101. In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, or a governor elected and qualified, shall devolve upon, and accrue to, the president of the senate. *Ib., sec. 12.*

SEC. 3102. If during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall in like manner administer the government (†). *Ib., sec. 13.*

SEC. 3103. The governor shall indorse on the bonds of the auditor and treasurer his approval thereof, stating the time of approval, and deliver the same to the secretary of state, who shall file the same among the records of his office (‡).

SEC. 3104. He shall cause the reports of the auditor, treasurer and all other officers required by law to make their reports to him to be printed with his biennial message, and have the same ready for the general assembly on or before the Wednesday of the first week of the session of the general assembly (d). *Act Jan. 10, 1853, sec. 1.*

EXECUTIVE MANSION.

SEC. 3105. The State of Arkansas shall furnish to its governors a mansion in which to reside during their respective terms of office.

(*) A vacancy in the office of treasurer of state, secretary of state, auditor of state, or attorney-general, is filled by appointment of the governor for the unexpired term. See *art. VI, sec. 22, Const.*

(*) See SEC. 6308.

(†) As to election to fill vacancy in the office of governor, see *art. VI, sec. 14, Const.*

(‡) See *Auditor v. Woodruff*, 2—73.

(d) It is his duty to report defaulters to the general assembly. SEC. 2519.

SEC. 3106. Until the state shall purchase or erect a mansion for its governors, they shall be authorized, as a part of the current expenses of the government, to rent a mansion for the period for which they are or may be elected.

SEC. 3107. Upon the certificate of the governor to any owner, his agent or attorney, from whom he has rented a mansion, to the amount due for the rent of the same, the auditor shall quarterly issue his warrant upon the state treasury for the same. *Act March 30, 1883.*

III.—SECRETARY OF STATE.

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- 3108. Secretary of state to give bond.
- 3109. to reside at seat of government.
- 3110. to keep a record of, what.
- 3111. to attest commissions, etc.
- 3112. seal of office.
- 3113. may appoint a deputy.
- 3114. deputy to take oath, etc.
- 3115. custodian of records of general assembly.
- 3116. to copy acts, etc.
- 3117. to certify to printed laws.
- 3118, 3119. to distribute acts and journals, etc.

CUSTODY AND SALE OF SUPREME COURT REPORTS.

- 3120. Secretary of state, to furnish reports to whom.
- 3121. expense of distribution, how paid by.
- 3122. to replace lost volumes, how.
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- 3124. duty of officers receiving from.
- 3125. to deliver to clerk of supreme court one hundred copies.
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- 3127, 3128. Secretary of state to supply lost, to counties, how.
- 3129. to have exclusive control of sale of; price.
- 3130. what number of volumes to reserve from sale.

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- 3131. Prices, etc.
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- 3133. Secretary of state to have control, when.
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LIBRARIAN FOR THE STATE.

- 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147. Secretary of state, librarian for the state; powers, duties.

SECTION 3108. The secretary of state shall, before he enters upon the discharge of his duties, enter into bond, with good and sufficient security, to the governor and his successors in office, in the sum of five thousand dollars, to be approved by the governor, conditioned that he will well and truly perform and discharge the several trusts and duties of secretary of state, and, in all things touching and concerning the said office, shall well, truly and faithfully execute and perform the same; which bond shall be filed with the auditor. *Act Jan. 4, 1849, sec. 5.*

SEC. 3109. He shall reside and keep all public records, books, papers and documents which may pertain to his office at the seat of government.

SEC. 3110. The secretary of state shall keep a full and accurate record of all the official acts and proceedings of the governor; and, when required, lay the same, with all papers, minutes and vouchers relating thereto, before either branch of the general assembly. *Art. VI, sec. 21, Const.*

SEC. 3111. He shall attest all commissions issued by the governor, and all such other official acts of the governor as require the seal of the state. *Act Jan. 4, 1849, sec. 3.*

SEC. 3112. He shall keep a seal of office, surrounded with the words, "Seal of the secretary of state, Arkansas," and shall make out and deliver to any

person requiring the same copies of any act, resolution or order of the general assembly, commissions or other official acts of the governor, and of all rolls, records, documents, papers, bonds and recognizances deposited in his office and required by law there to be kept, and certify said copies under his hand, and affix the seal of his office thereto (e).

SEC. 3113. He may appoint a deputy to aid him in the discharge of his duties, whose acts, performed in the name of the secretary of state, shall have the same validity as the acts of his principal.

SEC. 3114. Such deputy, before he enters upon the performance of his duties, shall take an oath, which shall be indorsed upon his letter of appointment, that he will perform all the duties of his office faithfully and according to law. *Act Jan. 2, 1848.*

SEC. 3115. The secretary of state shall receive from the secretary of the senate and clerk of the house of representatives the records, books, papers and rolls of the general assembly, and file the same as records of his office. *Act Jan. 4, 1849, sec. 1.*

SEC. 3116. He shall proceed to copy the acts, joint resolutions and memorials of the general assembly as soon as they are approved by the governor, and shall hand over copies thereof to the public printer. *Act Dec. 15, 1838.*

SEC. 3117. It is hereby made his duty to insert his certificate in the pamphlet containing the printed laws, joint resolutions, memorials, etc., that the laws thus printed are "correct copies of the originals on file in his office." *Act Dec. 31, 1852, sec. 1.*

SEC. 3118. It shall be his duty to distribute the acts and journals, and all such laws as are by law required to be distributed, among the different counties of this state. *Act Jan. 4, 1849, sec. 2.*

SEC. 3119. Every member of the general assembly, all officers required by law to be elected by joint vote of the houses of the general assembly, the governor, the clerk, sheriff, coroner, county treasurer, county surveyor, justices of the peace and constables of each county shall each be entitled to receive from the clerk in their county one copy of the acts and journals. *Act Jan. 12, 1853, sec. 5.*

CUSTODY AND SALE OF SUPREME COURT REPORTS (f).

SEC. 3120. He shall furnish the several clerks of the circuit courts, the judges of the circuit courts and the prosecuting attorneys of the several judicial districts each with one full set of the reports of the decisions of the supreme court, and also with each volume of the said reports, as the same shall be published and bound. *Acts Jan. 10, 1849, Jan. 9, 1851, Jan. 12, 1853.*

SEC. 3121. He shall be authorized to draw upon the contingent fund of his office for the payment of the necessary expense incurred by transmitting said reports to the respective officers entitled to receive the same. *Act Jan. 12, 1853.*

SEC. 3122. Upon the official certificate of any judge of the supreme or circuit court, or prosecuting attorney, to the secretary of state, that the reports of the supreme court, or any part of them, furnished him or his predecessors

(e) Papers so certified are to be received in evidence in all courts. SEC. 2827.

(f) See SEC. 1337.

in office, have been lost or destroyed, and can not be found or obtained, giving the number and volume so lost or destroyed, the secretary of state shall furnish such judge or prosecuting attorney with such number of volumes as will be required to make a full set, taking receipt therefor. Applicants under this section shall pay all charges for transportation, etc., on said reports. *Act July 18, 1868.*

SEC. 3123. Each judge of the supreme court shall be entitled to receive of the secretary of state one copy of the supreme court reports, the secretary of state taking their respective receipts therefor. *Act Dec. 23, 1840, sec. 4.*

SEC. 3124. The judges, clerks and prosecuting attorneys furnished with the reports shall keep the same in good order, and turn over the same to their successors in office; and on failure so to do, they shall be fined in any sum not less than five times the value of the volumes which they shall fail to turn over. *Act Jan. 12, 1853, sec. 2.*

SEC. 3125. The secretary of state shall, upon demand, deliver to the clerk of the supreme court one hundred copies of each volume of the reports of the supreme court now or hereafter published (g).

SEC. 3126. He is hereby authorized to distribute one set of the reports of the supreme court to each new county which has been or may be created by the general assembly, and which has not been supplied with such reports.

SEC. 3127. Whenever the reports of the supreme court have been lost or destroyed in any county, a new set of the same shall be supplied to such county.

SEC. 3128. Such supply shall be made on the certificate of the county clerk, approved by the circuit judge, showing such loss or destruction. *Act April 24, 1873.*

SEC. 3129. The secretary of state shall have exclusive control of the sale of said reports, and he shall not sell the same for more than two dollars and fifty cents per volume. *Act March 20, 1883, sec. 5.*

SEC. 3130. He shall reserve, from sale, for distribution to counties, fifty volumes each of such reports. *Provided*, that he shall always retain in his office at least three copies of each volume of said reports. *Act July 18, 1868, and act April 24, 1873.*

SEC. 3131. He is authorized and empowered to sell Rose's Digest of the Arkansas Reports at seven dollars and fifty cents per copy. First and second Geological Reports of Arkansas, at three dollars per copy. Gantt's Digest of the Statutes of Arkansas, at ten dollars per copy. Acts of Adjourned Session of 1875, at one dollar per copy. Acts of Session of 1874-5, at one dollar per copy. Acts of Session of 1877, at one dollar per copy. Constitution of 1874, at two dollars per copy. Constitution of 1868, at two dollars per copy. Code of Practice, at one dollar per copy. *Provided*, that the secretary of state shall retain in his office at least one hundred copies of each of the above mentioned books, except Rose's Digest, for distribution to officers entitled to the same.

SEC. 3132. The proceeds of all books sold under the provisions of this act shall be paid to the treasurer of state, to be placed to the credit of the sinking fund, except the sum of one hundred dollars annually, which may be used by

(g) See SEC. 1337.

the secretary of state in the purchase of such books as may be necessary and beneficial to the state library. *Act March 12, 1877.*

CUSTODIAN OF STATE-HOUSE AND GROUNDS.

SEC. 3133. The public property on the state-house square shall be under the supervision and control of the secretary of state, during the recess of the general assembly.

SEC. 3134. It shall be his duty to take charge of the keys of the state-house, on the adjournment of the general assembly, as well as the furniture, stationery, fuel, books and papers thereto belonging, and safely keep the same; and he is required, by and under the advice of the governor, to have such repairs made to the state-house, the furniture thereof and the state-house square as may be deemed necessary.

SEC. 3135. He shall not permit any public meeting or exhibition to be held in the hall or chamber, except it be a convention of delegates of the people from all parts of the state, and except on the fourth day of July, to hear the Declaration of Independence read.

SEC. 3136. He shall perform the duties specified in the three preceding sections without fee or compensation. *Act July 16, 1868, secs 2, 3.*

LIBRARIAN FOR THE STATE.

SEC. 3137. The secretary of state shall be librarian for the state library, and shall have custody and direction of all books, papers, maps, charts and all other things belonging to the same; and he shall take special care that none of them be lost or injured.

SEC. 3138. He shall cause to be bound, if not already done, in a cheap and substantial manner, three copies of each of the following works: The acts of each session of congress, the acts of the general assembly of this state, and the acts of every other state of the United States, and state papers and documents of the United States.

SEC. 3139. The librarian shall cause all such books now owned by the state, and such as hereafter may be acquired by it, to be thus prepared, arranged and kept in a convenient room in the state-house.

SEC. 3140. Where there shall be a deficiency in any of the acts, journals, or other works, it shall be the duty of the librarian to correspond with the proper officer, for the purpose of procuring copies of the different works; and, if not otherwise procured, he shall purchase them and place them in the library.

SEC. 3141. It shall be the duty of the librarian, under the direction of the governor, to purchase all such books, maps and charts as may from time to time be directed to be purchased by the general assembly.

SEC. 3142. All expenses of procuring such copies of acts, journals and other works as are mentioned in this act shall be paid out of the contingent fund of the general assembly.

SEC. 3143. The auditor of state shall adjust the accounts of the librarian, and draw warrants for the payment of the same.

SEC. 3144. No person shall be permitted to remove any book from the

library, except the governor, the auditor and treasurer, the members of the general assembly, judges of the supreme and circuit courts, and the attorneys for the state.

SEC. 3145. No person shall be permitted to remove any book from the library without giving a receipt therefor to the librarian.

SEC. 3146. If any person injure or fail to return any book, map or chart, taken from the library for more than three months, he shall forfeit and pay to the librarian, for the use and benefit of the library, three times the value thereof, or of the set to which it belongs, to be recovered in the name of the state for the use of the library.

SEC. 3147. The officers of the several departments of the state, who are entitled to the use of the library, may introduce citizens or strangers into the library, who shall have the privilege, during all seasonable hours, to read any of the books therein. *Rev. Stat., chap. 144.*

IV.—AUDITOR.

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3148. Auditor, bond of.
 3149. failing to give bond, office vacant.
 3150. seal of office, authentication by.
 3151. deputy, how appointed.
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 3153. may administer oaths.
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 3155. to keep letter-book.
 3156. is general accountant of state.
 3157. biennial report of.
 3158. not to report what bonds as part of state's indebtedness.
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 3161. duties as accountant, etc.
 3162. not to audit claim after two years.
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 3164. to draw warrant for money erroneously paid into the treasury.
 3165. may examine witnesses, etc.
 3166. to refer claim to general assembly, when.
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AUDITOR'S WARRANTS.

3170. Warrants, form of.
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 3172. numbered progressively, annually.
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Unexpended Balances.
 3174. Auditor to report warrants outstanding on appropriations or balances unexpended.
 3175. Sum to credit of appropriation to be covered into treasury.
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 3177. Auditor's warrant to be received and paid by treasurer only.

Lost Warrants, Re-issue of.

- 3178, 3179, 3180. May be re-issued, when and how.

EXAMINATION BY JOINT COMMITTEE.

3181. Committee, auditor to submit books, etc., to.
 3182. to examine and report.
 3183. report of, approved, action.
 3184. report unfavorable, action.

SECTION 3148. The auditor shall, immediately after his election, execute and deliver to the governor a bond to the State of Arkansas, with good and sufficient securities, in the sum of one hundred thousand dollars, conditioned for the faithful performance of all the duties required, or which may be required, of him by law (h). *Act Jan. 10, 1861.*

SEC. 3149. If the auditor shall neglect or refuse to enter into bond within ten days after the governor is officially informed of his election, the office shall be deemed and considered vacant.

(h) The governor approves the bond. SEC. 3103.

SEC. 3150. He shall keep a seal (i) of office, which shall be used to authenticate all writings, papers and documents required by law to be certified from his office. *Rev. Stat., chap. 18, secs. 5, 6.*

SEC. 3151. He may appoint a deputy, whose appointment shall be made in writing, and the deputy so appointed shall take the oath prescribed by law for his principal, which oath shall be indorsed on the letter of appointment, and such letter of appointment shall be filed in the office of the secretary of state; and the auditor shall be responsible on his official bond for all the acts done and performed by his deputy in the performance of his official duties.

SEC. 3152. Every deputy so appointed shall possess all the powers of his principal, and may perform any of the duties required by law to be performed by his principal. *Act Dec. 11, 1866, secs. 1, 2.*

SEC. 3153. The auditor shall have power to administer oaths in all matters touching the duties of his office. *Rev. Stat., chap. 18, sec. 29.*

SEC. 3154. He shall have free access to all the other offices of the state for the inspection, concerning his duties, of all books, accounts and papers which they respectively contain. *Ib., sec. 30.*

SEC. 3155. He shall keep a letter-book, in which he shall copy all official letters which may be written by him. *Ib., sec. 31.*

SEC. 3156. He shall be the general accountant of the state, and keep all public accounts, books, vouchers, documents and all papers relating to the contracts of the state, and its debts, revenue and fiscal affairs, not required by law to be placed in some other office or kept by some other person; and he shall be styled the "auditor of state." *Rev. Stat., chap. 18, sec. 7, and art. VI, sec. 1, Const.*

SEC. 3157. He shall digest and report to the governor, on or before the tenth day of October next preceding the regular meeting of the general assembly for each biennial session:

First. A full and detailed statement of the condition of the revenue and the amount of the expenditure for the two preceding fiscal years.

Second. A full and detailed statement of the public debt, if any.

Third. Estimates of the revenues and the amount of expenditures for the two succeeding fiscal years.

Fourth. Such plans as he may think expedient for the support of the public credit, for lessening the public expenses, for using the public money to the best advantage, and for promoting economy in the public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the state.

Fifth. A tabular statement showing separately the whole amount of each appropriation of money made by law, the amount paid under the same and the balance unexpended.

Sixth. A tabular statement showing separately the amount of money received into the treasury from all sources in each fiscal year, the amount received from each county and from each source of revenue in each county (j). *Rev. Stat., chap. 18, sec. 8, and act Jan. 10, 1853, sec. 1.*

(i) For form of seal, see SEC. 6309.

(j) He is also required to report a list of all defaulters to the governor ten days after each general election. SEC. 2517.

SEC. 3158. From and after the passage of this act, the auditor and treasurer are not required to report the railroad aid and levee bonds, and what are known as the Holford bonds, as part of the indebtedness of the State of Arkansas in their biennial reports. *Act April 9, 1881.*

SEC. 3159. It shall be the duty of the auditor, in connection with the biennial report now required of him, to publish "an accurate detailed statement of the receipts and expenditures of the public money," or evidences of indebtedness, showing the several amounts paid, to whom paid, and on what account. *Act March 6, 1877.*

SEC. 3160. He shall make quarterly reports to the governor of the amount of moneys in the hands of the treasurer belonging to the state or any county. *Rev. Stat., chap. 18, sec. 41.*

SEC. 3161. It shall be the duty of the auditor:

First. To audit, adjust and settle all claims against the state payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by some other officer or person.

Second. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law.

Third. To express in the body of every warrant which he may draw on the treasury for money the particular fund appropriated by law out of which the same is to be paid.

Fourth. To audit, settle and adjust the accounts of all collectors of the revenue and other holders of public money who are required by law to pay the same into the treasury.

Fifth. To keep an account between the state and the state treasurer.

Sixth. To keep an account of all moneys paid into the state treasury for the use of every county.

Seventh. To keep an account between the state and the United States, and between the state and every officer or person with whom the state may have dealings, and any separate fund in the treasury authorized by law.

Eighth. To direct prosecutions in the name of the state for all official delinquencies in relation to the assessment, collection and payment of the revenue against all persons who by any means become possessed of public money or property and fail to pay over and deliver the same, and against all debtors of the state.

Ninth. To procure from the proper officer an abstract and description of all taxable lands within the state not yet procured, and annually, hereafter, abstracts and descriptions of such lands as shall become taxable.

Tenth. To furnish the proper officer in each county, in the month of January, annually, a descriptive list of all taxable lands in such county not before furnished.

Eleventh. To give information in writing to either house of the general assembly, whenever required, upon any subject relating to the fiscal affairs of the state or touching any duty of his office.

Twelfth. To perform all such other duties as may be required by law. *Rev. Stat., chap. 18, sec. 9.*

SEC. 3162. All persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled

and allowed, within two years after such claims shall accrue, and not thereafter (k). *Ib.*, sec. 12.

SEC. 3163. He shall have power to refund any moneys erroneously paid into the state treasury, for lands sold by the commissioner of state lands through error, and to refund any balance which shall be due to any person having an account with the state, who shall have paid more money into the state treasury than the amount legally and justly due from such person upon final settlement of such account, for which purpose he shall draw a warrant on the treasurer (l). *Act Dec. 26, 1840.*

SEC. 3164. Whenever it shall be made to appear to the satisfaction of the auditor that any person has erroneously paid into the treasury of the state any moneys or funds of any description whatever, the auditor, upon ascertaining such fact, shall draw his warrant on the treasurer in favor of the person making such payment, for the amount so erroneously paid into the treasury, which amount shall be paid by the treasurer out of the fund to which such payment has been chargeable, and in the same description of funds paid in. *Act March 5, 1875.*

SEC. 3165. Whenever he may think it necessary to the proper settlement of any account, he may examine the parties, witnesses and others, on oath, touching any matter material to be known in the settlement of the account, and for that purpose may issue writs of summons and compel witnesses to attend before him to give evidence, in the same manner and by the same means allowed to courts of record.

SEC. 3166. If any person interested shall be dissatisfied with the decision of the auditor, in any claim, account or credit, it shall be the duty of the auditor, at the request of such person, to refer the same, with the reasons of his decision, to the general assembly.

SEC. 3167. In all cases where the law recognizes a claim for money against the state, and no appropriation shall be made by law to pay the same, the auditor shall audit and settle such claim, and give the claimant a certificate of the amount thereof, under his official seal, if demanded, and report the same to the governor, who shall lay the same before the general assembly (†).

SEC. 3168. All accounts, vouchers and documents settled by the auditor shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein who may require the same.

SEC. 3169. Whenever any person indebted to the state, on any account whatever, shall present to the auditor the treasurer's receipt for the full payment of the amount due, it shall be the duty of the auditor to furnish such

(k) This section applies only to such claims as are recognized by some law authorizing the liquidation and providing for the payment thereof. *State v. Thompson, use, etc.*, 10—61. Where the auditor, in the discharge of his appropriate duties, has a discretion in allowing or rejecting a claim against the state, and exercises it, his discretion can not be controlled or reviewed by *mandamus*. *Danley, auditor, v. Whitely*, 14—687. The state is not liable for interest in any case except where she has made an express agreement to pay it. *State v. Thompson*, 10—61.

(l) But there must be an appropriation. SEC. 3173; art. XVI, sec. 12. *Const.*; *Clayton v. Berry*, 27—129; *English v. Oliver*, 28—317. When there is an appropriation therefor, it is his duty to draw warrants; to pay costs in certain cases, SECS. 1052, 2347, 6393 (but the state pays no costs in actions for the recovery of money belonging to school fund, SEC. 6133); to pay postage of attorney-general, SEC. 3280; to pay rewards in certain cases, SECS. 3402, 2428; to pay certain expenses of commissioner of state lands, SEC. 3605.

(†) See *Filcs, auditor, v. State, ex rel., Gatewood*, 42—233.

person with a certificate, under his hand and official seal, of his having made full payment of all demands against him in favor of the state. *Rev. Stat., chap. 18, secs. 14, 15, 18, 19 and 25.*

AUDITOR'S WARRANTS.

SEC. 3170. In all cases of accounts audited and allowed against the state, and in all cases of grants, salaries and expenses allowed by law, the auditor shall draw warrants upon the treasury for the amount due, in the following form :

No. ———.

STATE OF ARKANSAS.

AUDITOR'S OFFICE,
LITTLE ROCK, ———, 18—. }

I certify that the sum of ——— dollars and ——— cents is due by the State of Arkansas to ——— ———, and do hereby direct that the treasurer of said state pay the said sum to the said party, or bearer, out of the appropriation to pay ———.

\$———.

_____,
Auditor.

Rev. Stat., chap. 18, sec. 16.

SEC. 3171. He shall enter, in a book to be kept for that purpose, each warrant drawn by him on the treasury for the payment of money, in the order in which the same shall be issued, in such manner as to show the number and date of each warrant, the name of the person in whose favor drawn, and for what drawn.

SEC. 3172. He shall number progressively all warrants issued by him during each year, commencing on the first day of January and ending on the thirty-first day of December. *Rev. Stat., chap. 18, secs. 20, 21.*

SEC. 3173. No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated (m) by law, nor shall the amount drawn for or paid under any one head ever exceed the amount appropriated by law for that purpose. *Ib., sec. 17.*

SEC. 3174. It shall be the duty of the auditor, at the expiration of the time for which each and every appropriation is made, to report to the state treasurer the total amount of the warrants drawn on such appropriations during such term, and if any balance remains unexpended of any appropriation for which no warrant has been drawn, the treasurer shall balance the accounts and cover such balance into the treasury.

SEC. 3175. It shall be the duty of the treasurer, on the receipt of the report of the auditor, mentioned in the preceding section, to bring down a balance to the credit of each appropriation sufficient to cover the warrants issued and not paid during the term for which such appropriation was made, and after such credits are given and books balanced, the balance shall then be covered into the state treasury.

SEC. 3176. In no case shall the auditor carry forward, from one term to another, an unexpended balance of any appropriation after the time for which it was made shall have expired. *Act Feb. 17, 1883.*

SEC. 3177. No warrant issued by the auditor shall be received in payment

(m) See art. XVI, sec. 12, *Const.*

of debts due the state, nor shall any such warrant, under any circumstances, bear interest, or be received or allowed as an offset in any suit commenced for the recovery of money due the state, but such warrants shall only be received and paid by the state treasurer (n). *Act Jan. 10, 1845, sec. 20; act March 4, 1867.*

Lost Warrants—Re-issue of.

SEC. 3178. Whenever auditor's warrants issued to any person or persons shall be lost or destroyed, the owner or person entitled to receive the contents of such lost or destroyed warrant shall have the same duplicated by the auditor, upon satisfactory proof or evidence to him that the warrants alleged to have been so lost or destroyed were actually issued to the person or persons, as stated in the application to him; that the same have not been paid by the treasurer of the state; that the person making the application is legally authorized or entitled to receive the contents thereof, and that the said warrant or warrants have been lost or destroyed, showing how and in what manner the loss or destruction occurred, the date and number of said lost or destroyed warrants, and whether the same bore interest or not; all of which shall be duly sworn to and subscribed by the person entitled to receive the contents of the same, or some person for him, and who shall also execute and file with said auditor his bond to the State of Arkansas, with good and sufficient security, to be approved by said auditor, in a sum not less than double the amount of the warrants claimed to be lost, conditioned that he will save and keep harmless the State of Arkansas against any payment of said warrants, which said state may thereafter be compelled to make to a *bona fide* holder of the same.

SEC. 3179. Upon compliance with the requirements of the foregoing section, it shall be the duty of the auditor to issue and deliver to the applicant, or his agent or attorney, a duplicate for such warrant so adjudged to have been lost or destroyed; and if the auditor finds that the said applicant was entitled to interest, the auditor shall indorse upon each of said duplicate warrants so issued the rate of interest, and the date from which interest was due thereon; and such duplicate warrant and indorsement thereon shall entitle the holder thereof to receive from the treasurer of the state the amounts specified in said duplicate warrant, and all interest due thereon, in like manner as upon an original warrant, out of any money in the treasury of the state not otherwise appropriated. *Act July 17, 1868, secs. 1 and 2.*

SEC. 3180. Nothing in sections 3178 and 3179 shall be so construed as to authorize any person to recover, as provided therein, upon any auditor's warrants lost or destroyed, unless the applicant shall prove by affidavit, to the satisfaction of the auditor, that within three months after discovering the loss or destruction of such warrants he gave notice in writing to the auditor and treasurer of the state, and made publication thereof in some newspaper published at the capital. *Ib., sec. 2, as amended by act Nov. 30, 1875.*

EXAMINATION BY JOINT COMMITTEE.

SEC. 3181. He shall submit all his accounts, books, vouchers and other official documents in his office to a joint committee of the general assembly,

(n) But they are receivable for state taxes. SEC. 5733.

immediately after the commencement of each session of the general assembly, for examination and settlement. *Rev. Stat., chap. 18, sec. 36.*

SEC. 3182. It shall be the duty of such committee to examine such books, accounts, vouchers and other official documents, and make report thereof to both houses of the general assembly. *Ib., sec. 37.*

SEC. 3183. If each house shall approve the report of such committee, an order shall be made directing the committee to cause the proper entries to be made in the books of the auditor, showing the result of such settlement. *Ib., sec. 38.*

SEC. 3184. If such committee shall make an unfavorable report, and find that the auditor has not performed the duties required of him by law, and, if such report shall be approved by both houses of the general assembly, an order shall be made directing the governor to cause suit to be brought against him on his official bond. *Ib., sec. 39.*

V.—TREASURER.

SECTION

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 3186. failing to give bond, office vacant.
 3187. seal of office, authentication by.
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 3189. powers of deputy.
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 3191. to have access to other offices.
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 3214. to examine and report.
 3215. report of, approved, action.
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SECTION 3185. The treasurer shall, immediately after his election, execute and deliver to the governor a bond to the State of Arkansas, with good and sufficient securities, in the sum of six hundred thousand dollars, conditioned for the faithful performance of all the duties required, or which may be required, of him by law (o). *Rev. Stat., chap. 18, sec. 2, and act Jan. 10, 1861.*

SEC. 3186. If the treasurer shall neglect or refuse to enter into bond within ten days after the governor is officially informed of his election, the office shall be deemed and considered vacant.

SEC. 3187. He shall keep a seal (p) of office, which shall be used to

(o) The governor approves the bond. SEC. 3103.

(p) For form of seal, see SEC. 6309.

authenticate all writings, papers and documents required by law to be certified from his office. *Rev. Stat., chap. 18, secs. 5, 6.*

SEC. 3188. He may appoint a deputy, whose appointment shall be made in writing, and the deputy so appointed shall take the oath prescribed by law for his principal, which oath shall be indorsed on the letter of appointment, and such letter of appointment shall be filed in the office of the secretary of state; and the treasurer shall be responsible on his official bond for all the acts done and performed by his deputy in the performance of his official duties (†).

SEC. 3189. Every deputy so appointed shall possess all the powers of his principal, and may perform any of the duties required by law to be performed by his principal. *Act Dec. 11, 1866, secs. 1, 2.*

SEC. 3190. The treasurer shall have power to administer oaths in all matters touching the duties of his office. *Rev. Stat., chap. 18, sec. 29.*

SEC. 3191. He shall have free access to all the other offices of the state, for the inspection, concerning his duties, of all books, accounts and papers which they respectively contain. *Ib., sec. 30.*

SEC. 3192. He shall keep a letter-book, in which he shall copy all official letters which may be written by him. *Ib., sec. 31.*

SEC. 3193. It shall be the duty of the treasurer:

First. To receive and keep all moneys of the state not expressly required by law to be kept by some other person (*).

Second. To disburse the public moneys upon warrants drawn upon the treasury according to law, and not otherwise (q).

Third. To keep a just, true and comprehensive account of all moneys received and disbursed by him in books to be kept for that purpose, in which he shall state from whom moneys have been received and on what account, and to whom and on what account disbursed.

Fourth. To keep a just and true account of each head of appropriation made by law, and the disbursements under the same.

Fifth. To render his accounts to the auditor for settlement quarterly.

Sixth. To report to the governor, on or before the tenth day of October next preceding the regular meeting of the general assembly for each biennial session, a statement of the condition of the treasury, and its operations for the two preceding years.

Seventh. To perform all such other duties as may be required of him by law. *Rev. Stat., chap. 18, sec. 22, and act Jan. 10, 1853, sec. 1.*

SEC. 3194. He shall report quarterly to the governor the amount of notes on hand, and by whom drawn, and the amount of moneys received and on hand on account of the sale of state lands. *Act Dec. 20, 1844, sec. 5.*

SEC. 3195. He is authorized and required, from time to time, to draw for and receive, from the secretary of the treasury of the United States, all sums of money which may accrue to the state on account of the five per cent. of the net proceeds of the sale of public lands of the United States lying within the State of Arkansas. *Act Nov. 5, 1836.*

SEC. 3196. The treasurer shall grant duplicate receipts under the seal of

(†) See *State v. Newton*, 33—276.

(*) See *State v. Newton*, 33—276.

(q) See art. XVI, sec. 12, *Const.*

his office for all sums of money which shall be paid into the treasury; and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

SEC. 3197. The treasurer, when he pays any warrant drawn by the auditor, shall write on the face of such warrant, "redeemed," to which he shall sign his name and the date thereof, and when he retires any treasury certificate he shall make a similar indorsement. *Rev. Stat., chap. 18, secs. 23, 24.*

SEC. 3198. The treasurer is hereby prohibited from paying any money out of the treasury on any account whatever, except upon the lawful warrants of the auditor. *Act March 26, 1883, sec. 2.*

SEC. 3199. All payments out of general appropriations for the ordinary expenses of the departments of the state governments shall be due and payable on the last day of each month; and all payments whatever of contingent expenses shall be due and payable as they may accrue. *Act March 7, 1877, sec. 3.*

TREASURER'S CERTIFICATES.

SEC. 3200. When an auditor's warrant, issued on and after the tenth day of November, A. D. 1874, shall be presented to the treasurer, and there is no money in the treasury out of which the same can be paid, the treasurer shall issue certificates or scrip for the amount specified in said warrant.

SEC. 3201. Said certificates shall be issued in the name of the person in whose favor the auditor's warrant was drawn, with the words "or bearer" inserted therein.

SEC. 3202. Said certificates shall be issued in such amounts as the party presenting the auditor's warrant may desire. *Provided*, that no certificate shall be issued for a less sum than one dollar.

SEC. 3203. The treasurer shall keep a register of every certificate issued under the foregoing provisions of this act.

SEC. 3204. The certificates issued under this act shall be received for the amount expressed on their face in payment of all debts whatsoever due the state, and all license or tax levied upon vendors of vinous or spirituous liquors and payable into the sinking fund, and for all state taxes whatsoever, except the interest on the public debt.

SEC. 3205. All certificates or scrip issued under the provisions of this act shall be paid out of any current funds appropriated for the payment of the expenses of the state government since November 10, 1874. *Act Jan. 20, 1875.*

SEC. 3206. All non-interest bearing state scrip, collected by the collectors of the respective counties for state school purposes, shall be by them paid into the state treasury, as now provided by law, and the same scrip paid out by the state treasurer upon the warrant of the auditor. *Act March 18, 1881.*

BOARD FOR EXAMINING SCRIP, ETC.

SEC. 3207. The governor, secretary of state and auditor shall be, and they are hereby constituted, a board for the purpose of examining canceled scrip, treasurer's certificates, warrants and other securities that may now be in the state treasury, or that may hereafter be received and borne on the accounts of

the auditor and treasurer as funds on hand or balances, with authority to count and destroy the same by burning or otherwise.

SEC. 3208. Whenever such funds or securities shall accumulate in the treasury in sufficient quantity to make it necessary or advisable to have the same destroyed, the treasurer shall prepare a statement thereof and submit the same to the governor, who shall thereupon assemble said board for the purpose of examining the funds scheduled or stated for examination; and if said board shall find, upon a careful and particular count and investigation, that such funds are correctly stated and agree in every particular with the schedules thereof, said board shall so certify, and shall thereupon immediately destroy such funds or cause the same to be done in their presence; and the certificate of said board shall be sufficient authority for the auditor to credit the treasurer's account with the amount of funds so destroyed. *Act May 28, 1874.*

FEEES AND MONEYS TO BE PAID DIRECTLY TO TREASURER.

SEC. 3209. Hereafter all fees due the commissioner of state lands, auditor of state and secretary of state, and all moneys due or payable to the state for any purpose or upon any account, shall be paid directly to the treasurer of the state, and no other person or officer shall be entitled to receive the same. *Provided*, that nothing in this section shall be so construed as to interfere with the duties of county collectors as now provided by law.

SEC. 3210. When either the commissioner of state lands, auditor or secretary of state shall sell any lands, books or other property of the state, prepare any commission, receive for filing any charter or paper connected therewith, or do any act or thing for which fees are payable, he shall, before delivering the thing or otherwise completing the act required, give to the person who shall make payment a statement of the amount due, or required by law, in which he shall state concisely the particular matter or account for which said sum is to be paid.

SEC. 3211. Such statement shall be presented and such money paid to the treasurer, who shall therefor execute and deliver duplicate receipts, which receipts shall be countersigned by the auditor, who, upon presentation of any such receipt, shall countersign the same, and charge the amount therein specified to the treasurer. One of said receipts shall be retained by the auditor, and the other shall be delivered to the officer from whom the person paying said money received such statement. Upon the reception of any such receipt, countersigned as above provided, by the auditor, the officer making such statement shall deliver the property sold, commission, papers or copies issued, or make proper filing or entry of any charter or other paper, or otherwise complete the required act. *Act March 2, 1883, secs. 1 and 2.*

DEPOSIT OF PUBLIC FUNDS PROHIBITED.

SEC. 3212. It shall be unlawful for the treasurer to deposit any of the public money, or evidences of debts due the state, or other securities or papers of value belonging thereto, in any bank or banking-house, or with any firm or

corporation; but he shall keep all moneys, evidences of debts due the state, or other securities or papers of value belonging thereto, in the vault and safe of the state provided for that purpose. *Act March 19, 1869.*

EXAMINATION BY JOINT COMMITTEE.

SEC. 3213. He shall submit all accounts, books, vouchers and other official documents in his office to a joint committee of the general assembly, immediately after the commencement of each session of the general assembly, for examination and settlement. *Rev. Stat., chap. 18, sec. 36.*

SEC. 3214. It shall be the duty of such committee to examine such books, accounts, vouchers and other official documents, and make report thereof to both houses of the general assembly. *Ib., sec. 37.*

SEC. 3215. If each house shall approve the report of such committee, an order shall be made directing the committee to cause the proper entries to be made in the books of the treasurer, showing the result of such settlement. *Ib., sec. 38.*

SEC. 3216. If such committee shall make an unfavorable report, and find that the treasurer has not performed the duties required of him by law, and if such report shall be approved by both houses of the general assembly, an order shall be made directing the governor to cause suit to be brought against him on his official bond. *Ib., sec. 39.*

VI.—ATTORNEY-GENERAL.

SECTION

3217. Attorney-general shall give opinion, when and to whom.
3218. What opinions to record; record of opinions to be indexed.
3219. He shall attend supreme court, etc.
3220. Failing to attend court, substitute may be appointed.

SECTION

3221. When and where to prosecute suits against state officers.
3222. Failing to prosecute defaulter, governor may employ an attorney.
3223. When governor may employ attorney to assist the attorney-general.
3224. What clerical force attorney-general may employ.

SECTION 3217. The attorney-general shall, without fee or reward, upon request, give his opinion in writing to the chief magistrate of the state and to the heads of the several executive departments thereof, upon any constitutional or other legal question that may concern the official action of said officers, or either of them; and he shall also, upon request, transmit his written opinion to the prosecuting attorney of any circuit who may ask it, upon any legal question that concerns the financial interest of the state. *Acts Feb. 3, 1843, and Jan. 14, 1857.*

SEC. 3218. The attorney-general is required to keep a well-bound book, in which he shall record one opinion on each particular point as given by himself, in all cases where he is now or may hereafter be required to give his opinion; which opinions shall be properly indexed by him and turned over to his

successor in office, who shall also comply strictly with the requirements of this law. *Act March 9, 1877.*

SEC. 3219. He shall attend the several sittings of the supreme court, and shall maintain and defend the interest of the state in all matters before that tribunal, and shall have full power to issue writs of *quo warranto* (t) in all cases where such writs should properly issue.

SEC. 3220. If he shall fail to attend any term of said court in which cases may be pending for or against the state, and prosecute or defend the same, and shall fail to furnish a substitute, the court may appoint such substitute; and the attorney so appointed shall receive as a compensation for his services for attending any term of said court, and prosecuting or defending such suits, the sum of two hundred dollars, to be paid out of the salary of the attorney-general on the certificate of the court. *Acts Feb. 3, 1843, and Jan. 14, 1857.*

SEC. 3221. The attorney-general is authorized and empowered, and it is hereby made his duty, to institute and prosecute all suits in behalf of the state against all officers of the state who are now, or may hereafter be, indebted to the state by reason of any moneys collected or received and not accounted for according to law: *Provided*, that such suits may be brought in any county of the state, at the option of the attorney-general, except in cases wherein the prosecuting attorneys of the different judicial circuits are now expressly authorized by law to bring suit.

SEC. 3222. Whenever, under the provisions of this act, the attorney-general shall fail to bring suit against any officer who is a defaulter, or investigate the books and accounts of any officer when there are reasonable grounds for believing that he is a defaulter, the governor may employ some competent attorney to prosecute such action. Such attorney shall be allowed a reasonable fee. *Act Feb. 28, 1883.*

SEC. 3223. Whenever it shall become necessary to institute legal proceedings on the part of the state against defaulting or delinquent state officers, the governor shall have the power to employ such competent attorneys at law as he may deem proper to assist the attorney-general in such proceedings, and to pay a reasonable fee for such services as may be rendered by them. *Act March 17, 1883.*

SEC. 3224. The attorney-general is hereby empowered to employ such clerical force in his office as may be necessary, at an expense not to exceed sixty-six and 66 $\frac{2}{3}$ —100 dollars per month. *Act March 22, 1881.*

(t) See sec. 4, art. VII, Const.

CHAPTER LXII.

FEDERAL JURISDICTION.

SECTION

3225. Jurisdiction ceded over forts and arsenals.
3226. over national cemeteries.

SECTION

3227. Jurisdiction ceded over site of public buildings
 at Little Rock.

SECTION 3225. The jurisdiction of this state within and over all forts and arsenals that may be established and erected by the United States within the limits of this state shall be, and the same is hereby, ceded to the United States, so far as the walls or permanent inclosures of the same shall extend and no further (a). *Rev. Stat., chap. 64.*

SEC. 3226. The jurisdiction of this state within and over all lands purchased by the United States on which national cemeteries may be established within the limits of this state shall be, and the same is hereby, ceded to the United States, so far as the permanent inclosures of such national cemeteries may extend and no further. *Act Feb. 21, 1867, sec. 1.*

SEC. 3227. The State of Arkansas hereby consents to the purchase by the United States of a site for public buildings, and hereby cedes and grants jurisdiction to the United States over any lot or lots, parcel or block of ground within the corporate limits of the city of Little Rock, not exceeding in area three hundred feet square, which shall or may be purchased by the United States as a site for a building for the accommodation of the United States circuit and district courts, post-office, internal revenue and other government offices, under the act of congress approved June 7, 1872; and the said state hereby releases and relinquishes her right to tax said site, and all improvements which may be thereon, during the time the United States shall be and remain the owner thereof. *Provided*, that this grant of jurisdiction shall not prevent the execution of any process of this state, civil or criminal, on any person who may be on said premises. *Act Feb. 21, 1873.*

(a) See art. I, sec. 8, Const. U. S., and note (p) thereto.

CHAPTER LXIII.

FEES (*).

SECTION

3228. Of secretary of state.
 3229. Of auditor of state.
 3230, 3231, 3232. Of commissioner of state lands.
 3233. Of prosecuting attorneys.
 3234. Of clerk supreme court.
 3235. Of clerks circuit court.
 3236. What fees to be paid before writ issues.
 3237. Fees of clerk circuit court, in chancery.
 3238. Of clerk Pulaski Chancery Court.
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 3240. For services under revenue law.
 3241. Of clerks probate courts.
 3242. Of masters in chancery.
 3243. Of recorders.
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 3251. In Pulaski Chancery Court, in state cases.
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 3254, 3255. Of county treasurers.
 3256. Of county surveyors.
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 3258. Of constables.
 3259. Of justices of the peace.
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3262. In civil cases, justices may require fees in advance.
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 3292. Clerk to indorse, what, on execution.
 3293. to deliver statement of fees due any person.
 3294. Fee-books evidence against clerk.
 3295. Penalty for charging, etc., illegal fees.

SECRETARY OF STATE.

SECTION 3228. The following fees shall be allowed for services performed by the secretary of state, and paid into the treasury in the same manner that all other fees are or shall be directed to be paid, viz.:

For affixing the great seal of the state or the seal of the secretary of state to any instrument.....	\$ 1.00
For every commission issued to a citizen of another state.....	5.00
For every commission issued to a state officer.....	15.00
For every commission issued to a sheriff or clerk.....	10.00
For every commission issued to a county judge or assessor.....	2.00
For every commission issued to any other county officer or justice of the peace.....	1.00
For every commission issued to a notary public.....	5.00
For all copies of records or other written or printed files in the office of the secretary of state, for every one hundred words.....	.15
For all copies of maps, profiles, or other files of a similar nature, such fee as may be established by the secretary of state, to be determined with reference to the amount of clerical labor and stationery required to make such copies, at the rate of not less than sixty cents per hour for the time employed in making the same.	

(*) For compensation of assessors, see SECS. 5663-5670. See art. XVI, sec. 4, Const.

Where the compensation of an officer is regulated by fees, he can only demand such as are authorized by law, and he can not charge for a particular service for which no special fee is provided, unless there is a general provision of law covering all services not specially provided for; such a general provision would not embrace services for the state or a county, unless they are expressly named or necessarily implied. *Cole v. White County*, 32-45; *Crittenden County v. Crump*, 25-235. See also *Stanford v. Wheeler, auditor*, 28-141.

For receiving each draft of articles or charter of a private incorporation, created for religious, literary, benevolent or scientific purposes, and not for purposes of pecuniary profit, directly or indirectly...	\$ 2.50
For filing each charter or draft of articles of a private corporation, created for any other purpose than that denoted in the preceding paragraph, excepting also railway and telegraph companies.....	25.00
For each amendment or supplement thereto (and the expense of recording the same).....	10.00
For filing such charter, or draft of articles, for a railway or telegraph company, for a line not exceeding twenty-five miles in length.....	50.00
For one exceeding twenty-five miles, and not exceeding fifty miles.....	75.00
For one exceeding fifty miles, and not exceeding seventy-five miles.....	100.00
For one exceeding seventy-five miles, and not over one hundred miles.....	125.00
For one exceeding one hundred miles, and not more than one hundred and fifty miles.....	150.00
For one exceeding one hundred and fifty miles, and not over two hundred miles.....	175.00
For one exceeding two hundred miles in length.....	200.00
For each amendment or supplement thereto (and the expense of recording the same).....	25.00

All the above specified fees shall be paid at the time the commission, certificate, instrument, or copy, is delivered, or the charter or draft of articles of incorporation is filed or recorded. *Act Feb. 25, 1875, sec. 1, as amended by act March 14, 1881.*

AUDITOR OF STATE.

SEC. 3229. The following fees shall be paid into the treasury for services performed by the auditor of state:

For each certified transcript from the auditor's office, to be paid by the person who shall desire the same.....	\$ 1.00
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COMMISSIONER OF STATE LANDS.

SEC. 3230. The following fees shall be paid into the state treasury for services performed by the commissioner of state lands:

For each commissioner's patent or deed, signed by the commissioner.....	\$ 1.00
For each commissioner's acknowledgment to patent or deed.....	.50
For each commissioner's certificate.....	1.00
For each commissioner's oath administered, and certificate thereto (<i>Id.</i> , <i>secs. 2 and 3</i>).....	.50

SEC. 3231.—

For each certificate of donation to forfeited lands issued by the commissioner of state lands, there shall be paid into the state treasury the sum of.....	\$ 10.00
For each donation deed issued by the commissioner of state lands there shall be paid into the state treasury the sum of (<i>Act March 30, 1883</i>).....	1.00

• SEC. 3232. For copying field notes and plats the following fees shall be charged, to wit:

For copying field notes, for one and not more than five sections, all in the same township and range, each.....	\$ 1.00
For six and not more than ten sections, all in the same township and range, each.....	.75
For eleven and not more than fifteen sections, all in the same township and range, each.....	.50
For sixteen and not more than twenty sections, all in the same township and range, each.....	.40
For twenty and not more than twenty-eight sections, all in the same township and range, each.....	.30
For twenty-nine and not more than thirty-six sections, or for a township and range.....	15.00
For plats showing vacant lands only.....	Noth'g
For plats showing topography and area, each.....	1.50
For plats showing topography, area, length of surveyed lines, fallings and variations, each (<i>Act Feb. 23, 1881, sec. 6</i>).....	2.50

PROSECUTING ATTORNEYS.

SEC. 3233. Prosecuting attorneys, when present and prosecuting cases, shall be allowed the following fees:

For each judgment obtained on complaint, information or otherwise, in the name of the state or any county.....	\$ 5.00
For each conviction on indictment, presentment or information for misdemeanor or breach of the peace.....	10.00
For each conviction in cases of gambling.....	25.00
For each conviction on indictment for any felony not capital.....	25.00
For each conviction of homicide, other than capital.....	35.00
For each conviction in capital cases.....	75.00

They shall be allowed ten per cent. of the amount on forfeited bail bonds and recognizances.

Prosecuting attorneys shall be entitled to the same fees for prosecuting in cases of misdemeanors before justices of the peace as in the circuit court (*). *Act Feb. 25, 1875, sec. 4, as amended by act Dec. 13, 1875.*

CLERK OF SUPREME COURT.

SEC. 3234. The clerk of the supreme court shall be allowed fees, as follows:

For each day of the term, to be paid out of the contingent fund of the supreme court, on the certificate of the chief justice or other judge	\$ 3.00
For each writ of error, <i>mandamus, quo warranto, certiorari, procedendo</i> , prohibition, granting appeals and taking <i>supersedeas</i> bonds.....	1.50
For each other writ, original, remedial, judicial or mesne process, or taking recognizances.....	1.00
For filing transcript or petition, and docketing case	.75
For entering judgment or decree or dismissing case, copying judgment, transcribing same on judgment docket, entering <i>remittitur</i> or admission or suggestion of record, certificate and seal, each	.50
For each motion, order, or rule, or copying same, each submission, continuance, appearance, filing each paper	.25
For recording the opinions of the court, to be paid out of the contingent fund of the supreme court, on account, to be certified by the clerk, under his seal of office, for each one hundred words.....	.15
For copying an opinion, brief or record, for each one hundred words	.10
For search for each year.....	.10
For enrolling an attorney of court.....	1.00
For recording the license of each attorney permitted to practice in the supreme court, and for the certified transcript thereof furnished the attorney.....	3.00
For making transcript of opinions for supreme court reporter, for each one hundred words, to be paid out of the contingent fund of the supreme court on the certificate of the reporter	.10

Before a transcript shall be filed in the supreme court, unless it is filed at the instance of the state, or in a criminal case, one-half of the estimated costs of the clerk shall be paid. *Ib., sec. 6.*

CLERKS OF CIRCUIT COURTS.

SEC. 3235. Clerks of the circuit court shall be allowed fees, as follows:

For filing complaint, answer, reply, petition, demurrer, affidavit or other paper in a cause.....	\$.10
For drawing and sealing any writ, original or judicial	.75
For docketing a cause each term	.10
For entering the appearance of each defendant.....	.15
For taking and entering a recognizance or bail in civil or criminal cases	.50
For every bond in a case, including bonds for the payment of costs, written by the clerk.....	.50
If written by the party.....	.25
For entering surrendering of principal by bail.....	.25
For filing jailer's receipt or writing exoneration	.15
For entering an order canceling a bail bond or discharging recognizance	.10
For every issue joined	.15
For every motion or rule.....	.15
For each continuance.....	.15
For each subpoena.....	.50
For every rule of reference to show cause, to take depositions, or give security for costs	.20
For copying same, without seal, if demanded	.15
For commission to take deposition	.50

(*) See SEC. 2342.

For copy of interrogatories thereto annexed, if any, for every one hundred words	\$.10
For entering every order not otherwise provided for.....	.20
For entering a retraxit, discontinuance or non-suit	.50
For entering each judgment	.50
For swearing and entering each jury.....	.50
For taking and entering a general verdict of a jury.....	.25
For taking and entering a special verdict, for every ten words.....	.01
For a trial before a court without a jury.....	.25
For entering a report of arbitration	.25
For entering judgment upon any issue of law or fact, or on a report of arbitration.....	.25
For each submission.....	.15
For entering each appeal from inferior courts or from a justice of the peace	.50
For entering appeal to the supreme court.....	.50
For taking an appeal bond or recognizance.....	.50
For writ of attachment.....	.75
For a writ of <i>mandamus</i>	.75
For administering each oath.....	.10
For entering satisfaction of record.....	.20
For transcribing each judgment on judgment docket.....	.50
For copies of bonds and papers for every one hundred words	.10
For a writ of <i>ad quod damnum</i>	.75
For entering each inquest or judgment thereon.....	.50
For bringing a particular record into court.....	.10
For entering and taking the acknowledgment of a sheriff's deed.....	.50
For taking the acknowledgment of a deed in other cases.....	.50
For certificate and seal	.50
For each <i>scire facias</i>	.50
For venire to summon grand or petit jurors	.50
For each indictment returned into court.....	.50
For issuing each execution.....	.50
For registering each attorney.....	1.50
For indexing each case, each time (<i>Ib.</i> , sec. 7, as amended by act Dec. 13, 1875).....	.10

SEC. 3236. No action shall be entered upon the docket of any court nor any original mesne or final process issued therein, except in criminal cases and cases where the state is plaintiff, until the fees for entering the case upon the docket and for issuing such writ, and the taxes thereon, if any, be paid, or bond and security, to the approval of the clerk, given therefor; and no clerk shall be liable to an action for refusing to docket a cause or issue any writ, unless the fee and tax thereon be first tendered or secured as herein provided. *Ib.*, sec. 8.

IN CHANCERY.

SEC. 3237. The clerk of the circuit court in chancery shall be allowed fees as follows :

For filing bill, answer, plea, demurrer or replication in a case.....	\$.15
For drawing, sealing, writing and issuing a writ (original).....	1.00
For entering the appearance of each defendant.....	.15
For docketing a case at each term.....	.15
For taking every bond in a case.....	.50
For every issue joined.....	.15
For entering every motion or rule.....	.15
For every continuance of a cause.....	.25
For every subpoena.....	.25
For every rule or reference, to show cause, to take depositions, or give security for costs.....	.25
For every commission to take depositions.....	.75
For every copy of interrogatories, for every one hundred words.....	.10
For swearing and entering each jury.....	.50
For taking and entering verdict.....	.40
For every trial of an issue of fact before the court, without a jury.....	.40
For entering interlocutory decree.....	1.00
For entering a final decree.....	1.50
For entering every order not otherwise provided for.....	.40
For entering report of master.....	.40
For order of court approving master's sale.....	.40

For filing exceptions to bill, answer or master's report.....	\$.15
For filing affidavit or other papers in a cause.....	.10
For administering each oath.....	.10
For entering each appeal.....	.50
For taking appeal bond or recognizance.....	.50
For writ of injunction.....	1.00
For process of <i>sequestratur</i>	.75
For an attachment against a witness or juror.....	.40
For copies of records and papers, for every one hundred words.....	.10
For bringing a particular record into court.....	.10
For certificate and seal.....	.50

For all other services, such fees as are or may be allowed to clerks of the circuit court for similar services at law. *Ib.*, sec. 9, as amended by act Dec. 13, 1875.

CLERK OF PULASKI CHANCERY COURT.

SEC. 3238. The clerk of the Pulaski Chancery Court shall receive the same fees as are allowed by law for similar services in the circuit court, and the same fees that are allowed by law to the clerk of the supreme court for similar services. The fees of said clerk that are not taxed as individual cost against parties litigant shall be audited and approved by the chancellor, and paid out of the state treasury. *Ib.*, sec. 10.

CLERKS OF COUNTY COURTS.

SEC. 3239. The clerks of the county courts shall be allowed fees as follows:

For each order to erect or repair a bridge.....	\$.25
For making out and issuing an order for the appointment of a commissioner or commissioners to erect or repair any bridge.....	.25
For filing a bond of any contractor.....	.10
For reading and filing every petition and recording the order to be made thereon, to be paid by the petitioner.....	.25
For copying petition, order and other papers pertaining thereto, for every one hundred words, to be paid by the petitioner.....	.10
For reading and filing a remonstrance against any road or bridge, to be paid by the complainant.....	.25
For each certificate of the appointment of road viewers and reviewers.....	.10
For issuing a precept of inquiry of damages in the case of roads, to be paid by the applicant.....	.40
For reading and filing returns of inquisitions, to be paid by the applicant.....	.40
For entering every order for the appointment of a justice of the peace to apportion hands to work on roads, and copy of the same.....	.20
For entering the appointment of each overseer of a road.....	.20
For each notice to overseers and justices of the peace.....	.10
For entering each order concerning the erection or repairing of any county building.....	.25
For entering the appointment of any commissioner or commissioners to superintend the erection or repairing of any county building, and issuing the certificate of appointment.....	.50
For entering every order for ascertaining any county line, and a copy thereof.....	.50
For entering every order approving any return of the survey of the county line.....	.50
For recording a return of any survey of a county line, if approved.....	.20
For entering every order of appointment of the judges of election and issuing certificates therefor, for each township.....	.50
For entering every order fixing the place of holding elections.....	.25
For entering every order for the support of a poor person.....	.20
For all services required to be performed by him in relation to the laying out of a township, or altering township lines and certifying the same.....	.50
For trying and sealing any weight or measure, to be paid by the applicant.....	.20
For taking each collector's bond, to be paid by the collector.....	1.00
For taking, filing and safe-keeping of any bond required by law to be filed in his office, not otherwise provided for, to be paid by the applicant.....	.25
For making settlements of each account with the county.....	.10
For each allowance against the county.....	.10
For each warrant on the treasury.....	.10
For issuing each writ, receiving, filing and docketing return.....	.50

For recording mark or brands.....	\$.10
For filing every paper not heretofore specified (†).....	.10
For administering each oath.....	.10
For swearing and entering each jury.....	.40
For copies of records and papers not heretofore provided for, for each one hundred words.....	.10
For taking and entering verdict of jury.....	.20
For entering judgment, except allowance against the county.....	.20
For every rule or order not hereinbefore specified.....	.20
For commissions to take depositions.....	.75
For indexing each case on record.....	.10
For entering all appeals except on assessment books.....	.20
For every certificate and seal not heretofore provided for.....	.25
For every subpoena embracing the witnesses demanded and named at the time.....	.25
For recording every paper not hereinbefore provided for, for every one hundred words.....	.10
For entering on record the appraised value of estrays and filing bond and appraisement.....	.50
For all services attending licensing a ferry or tavern, to be paid by the applicant, for each license.....	.75
For filing and approving bond for marriage license.....	.25
For issuing each marriage license.....	1.25
For filing, recording and certifying copy of marriage license after its return.....	.50
For all services in issuing licenses to hawkers, peddlers, auctioneers, circuses, menageries, or other public exhibitions, for which a license is by law required, and for every license for the sale of ardent or vinous liquors, either at wholesale or retail, to be paid by the applicant, for each license (provided, that shows or public exhibitions may have a license for a period of twelve days or less issued for one license fee).....	2.00
For furnishing blank poll-books for each township.....	1.25

For Services Under the Revenue Laws.

SEC. 3240. The county clerk shall receive for services under the revenue law:

For each settlement with constables or other inferior collecting officers, for fines, penalties and forfeitures collected by them.....	\$.75
For each abstract forwarded to the auditor and state superintendent of public instruction.....	.75
For each notice of deficiencies of collecting officers forwarded to the prosecuting attorney.....	.75

The fees provided for above in this section shall be paid for by the county, under the order and direction of the county court.

For making out the original tax-books, for every one hundred words, counting one figure a word, but excluding calculations not carried into the tax-books.....	\$.10
For each copy thereof, for every one hundred words, counting three figures a word, as aforesaid.....	.10
For furnishing copy of delinquent lands to printer, for each tract.....	.05
For attending sales of delinquent lands and making record thereof, for each tract aforesaid for sale....	.10
For each certificate of purchase or redemption, containing four tracts or less.....	.25
For each additional tract.....	.10
For recording delinquent list of personal property, for every one hundred words.....	.10
For making settlement with collector, for each day employed, not exceeding six days.....	2.00
For furnishing auditor with an abstract of tax-books.....	3.00
For making a deed to the purchaser for lands sold at delinquent tax sale.....	1.00
For making each certificate for lands sold to the state at delinquent tax sales (*) (<i>Ib.</i> , secs. 11 and 13, as amended by act Dec. 13, 1875).....	2.50

CLERKS OF PROBATE COURTS.

SEC. 3241. Clerks of the probate courts shall be allowed the following fees:

For granting letters of administration or testamentary, recording the same, administering oaths, and all things relating thereto.....	\$.175
For entering an order of the appointment of guardians, taking, filing and recording, and certificate of appointment or letters of guardianship.....	1.00
For every order relating to administrators, executors or guardians.....	.10
For copying any record or paper not hereinbefore provided for, for every one hundred words.....	.10
For taking bond for heirs to refund.....	.40

(†) See *Cole v. White County*, 32—45.

(*) See SEC. 5784.

For filing claim.....	\$.10
For affidavit to claim.....	.25
For docketing claim.....	.10
For each motion.....	.10
For each submission.....	.15
For each trial.....	.20
For order of allowance and reclamation.....	.20
For transcribing to abstract docket and indexing.....	.20
For entering verdict and judgment, except allowances of claims.....	.20
For taking new bond of executors, administrators or guardians.....	.50
For recording any instrument of writing, for each one hundred words.....	.10
For issuing citation to administrator, executor or guardian.....	.50
For taking proof of any will or codicil.....	.75
For recording any will or codicil, and proof thereof, for each one hundred words.....	.10
For every certificate and seal.....	.50
For issuing each subpoena.....	.25
For recording each settlement of administrator, executor or guardian, for each one hundred words....	.10
For filing exceptions to executor's or guardian's accounts, and making all orders in relation thereto....	.50
For putting up advertisement of settlement of executors, administrators and guardians (<i>Ib.</i> , sec. 12, as amended by act Dec. 13, 1875).....	.20

MASTERS IN CHANCERY.

SEC. 3242. Masters in chancery shall be allowed a reasonable compensation for any services that may be required of them, the amount of such compensation to be audited and allowed by the court requiring such services; and, for taking depositions, the same fees as are allowed to other officers. *Ib.*, sec. 14.

RECORDERS.

SEC. 3243. The recorder shall be allowed fees as follows :

For recording, indexing and cross-indexing every instrument of writing, each one hundred words.....	\$.10
For every certificate and seal.....	.50
For entering satisfaction of record (<i>Ib.</i> , sec. 15, as amended by act Dec. 13, 1875).....	.10

SEC. 3244. No recorder shall be required to indorse any instrument presented to him for record as filed, or to record the same, unless the fees for recording and the tax thereon, if any, be first tendered to him; nor shall any recorder be subject to any action or liable in any manner, unless such fees shall be first tendered, for a failure or refusal to record any such instrument.

OFFICERS TAKING DEPOSITIONS.

SEC. 3245. The fees allowed an officer for taking depositions shall be two dollars for each deposition and five cents per mile for each mile that an officer may have to travel in going to and returning from the place of the taking, the distance to be estimated from his office; but, whatever the number of depositions taken in one day for the same party in any action, the fees thereof shall not exceed five dollars, and if the officer shall be engaged more than one day in taking a deposition, he shall receive two dollars per day for each day he may be engaged in taking one deposition.

SEC. 3246. For issuing a subpoena or warrant of arrest, and for summoning or arresting the witnesses, the same fees shall be paid as are allowed to clerks and sheriffs for similar services. *Ib.*, secs. 16-18.

SHERIFFS (*).

SEC. 3247. Sheriffs shall be allowed fees as follows :

For serving every <i>capias</i> , summons, <i>scire facias</i> , or attachment, for each defendant and garnishee.....	\$.50
For taking and entering every bail or delivery bond.....	.50
For serving every writ of garnishment on every garnishee.....	.50
For serving a writ of injunction on each defendant.....	1.00
For attending each court, per day.....	3.00
For calling each action at each time.....	.10
For calling each party at each time.....	.10
For calling each jury.....	.25
For calling each witness.....	.05
For committing a criminal or other person to jail.....	.50
For furnishing a prisoner, per day, when paid by the prisoner.....	.75
For serving <i>habere facias possessionem</i> , or attachment.....	1.00
For serving every writ of execution.....	.75
For making, executing and subscribing a sheriff's deed, to be paid by the purchaser.....	2.00
For executing a certificate of purchase for real estate under execution.....	.50
For every return of <i>non est</i> on a writ, original or judicial.....	.25
For return of <i>nulla bona</i>	.25
For executing a writ of inquiry.....	1.00
For summoning a grand jury (a).....	7.50
For summoning a petit jury, regular panel, selected by jury commissioners.....	10.00
For summoning a special jury to assess damages on special venire.....	2.50
For summoning each witness.....	.50
For each <i>non est</i> on subpoena.....	.10
For serving each notice or rule of court, notice to take depositions, or citations, to executors, administrators or guardians.....	.50
For every trial of a civil or criminal case, or confession in open court.....	.30
For every trial in a capital case.....	2.00
For executing each death warrant.....	25.00
For mileage in serving each writ, process, notice, subpoena or rule, except county matters, for each mile circular (b).....	.05
For advertising goods or land for sale (and no further fee shall be allowed for advertising in newspapers).....	.75
For returning each execution or attachment.....	.75
For advertising elections for each township.....	2.00
For delivering poll-books for each township.....	2.00
For serving each order or rule of county court (but no mileage).....	.75
For collecting and paying over all fines, penalties and forfeitures.....	3p'rct
For commission for receiving and paying money on execution or process when lands or goods have been taken in custody, advertised or sold.....	2p'rct

All moneys collected by the sheriffs shall be paid to the person entitled to receive the same, or his order, or his attorney of record. If more persons than one are named in a writ, process or subpoena, the mileage in serving the same shall be computed from the place where the court is held to the place of serving which shall be the most remote, adding thereto the extra travel which shall be necessary to serve it on the others; and in no case shall fees for mileage be allowed unless the travel has been actually performed. *Id.*, sec. 19, as amended by act Dec. 13, 1875.

SEC. 3248. In criminal cases where the costs are paid by the county, no sheriff, coroner, constable or other person serving subpoenas for witnesses shall be allowed to receive from the county pay for making more than two returns on subpoenas in any given case, and in no case shall either of said officers or other person charge or receive pay or mileage in serving any writ, process or subpoena in a criminal case for more than the actual number of miles traveled.

(*) For commission, fees and mileage allowed collectors, see SECS. 5748, 5749, 5765, 5797, 3252.

(a) A sheriff is entitled to mileage for summoning grand and petit jurors. *Williams v. Hempstead County* 39—176.

(b) See note (a) *ante*.

SEC. 3249. The sheriff, constable or other officer shall safely keep all property taken or seized under legal process, and shall be allowed by the court the necessary expenses of doing so, to be paid by the plaintiff and taxed in the cost.

SEC. 3250. No sheriff, coroner, constable or other officer shall be compelled to execute any writ or process except in criminal cases, and in cases where the state or county is plaintiff, unless the person in whose favor such writ or process is issued, his agent or attorney, shall first tender to such officer a sufficient sum of money to pay the cost of such service and mileage from the courthouse to the usual place of abode of the defendant or other person named in such writ or process; nor shall any such officer be liable in any manner whatever for failing or refusing to execute any writ or process until the fees therefor be first tendered (c).

SEC. 3251. The fees of the sheriff of the Pulaski Chancery Court that are not taxed as individual costs against parties litigant shall be audited and approved by the chancellor and paid out of the state treasury.

MILEAGE OF COLLECTORS.

SEC. 3252. The collectors of revenue, in making their annual settlements on account of state revenue, and paying over the same, shall be allowed mileage, at the rate of ten cents per mile from the county seats of their respective counties to and returning from the capital of the state by the most direct and usually traveled land route, and the auditor shall allow them credit therefor in their said settlement, but the auditor shall not allow mileage to any collector for more than one time in any one year. *Ib.*, secs. 20-23, 25.

CORONERS.

SEC. 3253. Coroners shall be allowed fees as follows:

For viewing a dead body in case of inquisition of death	\$ 3.00
For summoning each witness	.50
For each deposition duly taken and returned.....	.50
For summoning and swearing jury, taking and returning inquisition	5.00
For taking each recognizance	.50
For arresting any person whom, according to the inquisition or otherwise, he may be bound to arrest..	1.00
For going from his residence to the place of viewing a dead body and returning, each mile	.05
For each mile traveled in arresting any person, and committing such person	.05

Such fees, together with the fees of jurors and witnesses, shall be paid out of the county treasury as other demands.

For performing the duties of sheriff the coroner shall be entitled to the same fees for the time being as are allowed to sheriffs for such services. *Ib.*, sec. 26, as amended by act Dec. 13, 1875.

COUNTY TREASURERS.

SEC. 3254. The county treasurer shall be allowed fees as follows: In all cases where the amount received does not exceed one thousand dollars in any

(c) An officer may refuse to execute civil process until his fees are paid or tendered, but, if he accepts it, and either expressly or tacitly assumes to execute it without demanding his fees, he must do so as promptly and faithfully as if they had been paid in advance. *Alexander v. State, use, etc.*, 42-41.

one year, four per centum; on all sums over one thousand dollars, not exceeding two per centum, at the discretion of the county court, to be paid out of the respective funds.

SEC. 3255. He shall be allowed, as commissions on the aggregate amount of all school funds of the county coming into his hands in any one year, the rate of two per cent., and no more (†). *Ib.*, secs. 27, 28.

COUNTY SURVEYORS.

SEC. 3256. The county surveyor shall be allowed fees as follows:

For each day he may be engaged, either under an order of court or otherwise.....	\$ 5.00
For each mile traveled from the place of his residence to the place where the survey is to be made and back.....	.05
For calculating the amount of land in a tract and making a plat thereof.....	.50
For calculating each division of a tract when the same may have been divided.....	.50
For recording plat and certificate.....	.25
For every copy of a plat and certificate (<i>Ib.</i> , sec. 29, as amended by act Dec. 13, 1875).....	.25

NOTARIES PUBLIC.

SEC. 3257. Notaries public shall be allowed fees as follows:

For noting a bill of exchange or promissory note for protest.....	\$.50
For entering protest of the same.....	.75
For registering protest.....	.40
For notice to indorser and other parties, each.....	.50
For taking each acknowledgment.....	.50
For each marine protest.....	2.00
For other protest to secure insurance.....	2.00
For copy of record and papers in his office, for each one hundred words (<i>Ib.</i> , sec. 30).....	.05

CONSTABLES.

SEC. 3258. Constables shall be allowed fees as follows:

For serving a warrant in a criminal case, for each defendant.....	\$.75
For taking a criminal to jail.....	.75
For summoning each jury before a justice.....	.75
For levying each execution.....	.50
For taking each delivery bond.....	.75
For summoning each witness.....	.25
For levying a writ of attachment.....	.75
For every return of <i>non est</i> on a writ, original or judicial, or subpoena.....	.10
For return of <i>nulla bona</i>	.10

Constables shall receive the same compensation for mileage, and as commissions for receiving or paying moneys on execution or process, when goods have been in custody, advertised or sold, as is allowed to sheriffs for similar services.

JUSTICES OF THE PEACE.

SEC. 3259. Justices of the peace shall be allowed fees as follows:

For administering each oath.....	\$.10
For issuing each subpoena.....	.25
For every summons in civil or criminal cases.....	.50
For every warrant in a criminal case.....	.50
For each writ of attachment.....	.50
For entering each judgment.....	.40

(†) See *Lawrence County v. Hudson*, 41—494.

For entering each order of continuance, for each cause.....	\$.25
For each execution.....	.50
For affidavit to procure warrant in a criminal case.....	.25
For entering each appeal and certified copy of proceedings under which the same is taken.....	.50
For entering stay of execution and bond.....	.40
For issuing each <i>scire facias</i>	.25
For issuing each venire for jury.....	.25
For taking and certifying each acknowledgment of any instrument of writing.....	.50
For solemnizing each marriage.....	2.50
For taking each recognizance.....	.50
For all services in relation to estrays.....	1.50
For swearing a jury.....	.25
For each trial in a civil case.....	1.00
For each trial in a criminal case.....	1.00
For filing and preserving all papers in each case.....	.15
For filing schedule and issuing <i>supersedeas</i> , to be paid by the applicant.....	1.00
For furnishing transcript in cases of change of venue, to be paid by the applicant....	1.00

For attending to the duties of a coroner, in holding inquisitions, the same fees as a coroner. *Ib.*, *secs.* 31 and 32, as amended by act Dec. 13, 1875.

SEC. 3260. No clerk or magistrate shall receive pay from any county for the issuance of more than two subpoenas in a criminal case.

SEC. 3261. In criminal cases tried or examined before a justice of the peace where witnesses are recognized to appear before any circuit court, they shall all, when practicable, be included in one recognizance, and in no such case shall such justice receive pay from the county for more than one recognizance.

SEC. 3262. In all civil cases before a justice of the peace, the same advance payments shall be made, or bond and security given, as are provided for clerks for the issuance of any writ or process. *Ib.*, *secs.* 33-35.

SEC. 3263. In all cases of felony where complaint shall be made before any justice of the peace or other officer, and the party against whom such complaint shall be made shall, upon a hearing thereof, be discharged, committed to jail or bound over for his appearance at the circuit court, the justice or other officer or person to whom any fees may be due shall make out a fee bill for his costs allowed by law, which may have accrued in said case, and shall present to the county court an itemized account, duly sworn to, which shall be examined as provided in the following section, and, if found correct, audited and allowed by the county court. *Ib.*, *sec.* 36, as amended by act Dec. 13, 1875.

SEC. 3264. It shall be the duty of the county court to carefully examine such fee bills, and it may, in its discretion, summon witnesses to enable it to ascertain the correctness and validity of the same; and, if upon examination and investigation, the court shall be of opinion that such fee bills are not authorized by law, or are based upon frivolous, malicious or unauthorized prosecutions, improperly allowed by any magistrate, then the court may reduce, modify or wholly disallow the same.

JURORS.

SEC. 3265. Jurors shall be allowed compensation as follows:

Each grand or petit juror in the circuit court, per day.....	\$ 2.00
Each juror attending a view, inquest, or on the execution of a writ of <i>ad quod damnum</i> , per day.....	1.00
Every jury in a justice's court, for each verdict made by them, to be taxed as other costs.....	1.50

Jurors who leave home and attend any court, in pursuance of a summons, shall be allowed the sum necessarily paid out for crossing any ferry or toll-bridge in going to and returning from such court. The clerk shall give to each grand and petit juror a certificate of his attendance and services as such juror.

WITNESSES.

SEC. 3266. Witnesses shall be allowed compensation as follows:

For each day's attendance before any circuit court, arbitration, auditor, commissioner, or other persons in civil cases, per day (d).....	\$ 1.50
For each day's attendance in criminal cases, per day.....	1.50
For attending before a justice of the peace.....	.50

SEC. 3267. A witness subpoenaed to attend before any circuit court in more than one criminal case at the same term, or before a justice of the peace at the same time, shall be allowed pay, when the costs are paid by the county, in but one case, and only for the actual number of days he is in attendance, no matter in how many cases he is summoned or called upon to testify.

SEC. 3268. No witness shall be allowed mileage for attendance in any case within the limits of the county in which he may reside.

SEC. 3269. A witness subpoenaed to attend without the limits of the county within which he resides shall receive five cents per mile for going from and returning to his residence by the most direct route.

SEC. 3270. Every account for attendance of a witness shall be sworn to, and shall state that he was summoned to attend as a witness in the cause upon which the charge is made, and the number of days he attended, and, if summoned without the limits of the county, the number of miles he traveled in consequence of the summons.

SEC. 3271. Every witness summoned to give evidence upon the part of the state before a grand jury shall prove his attendance before the clerk of the court at which he attended, and the clerk shall give to such witness a certificate of his attendance, stating the amount due such witness.

SEC. 3272. Every witness shall prove up his attendance at each term he may attend before any court, or each time he may attend before any justice of the peace, whether the case be determined or not, before the clerk of the court or justice that he may be summoned to appear before.

SEC. 3273. Witnesses who leave home and attend any court in pursuance of a subpoena shall be allowed the amount necessarily paid out for crossing any ferry or toll-bridge in going to and returning from such court. *Ib.*, secs. 37-46.

PRINTERS.

SEC. 3274. The charges for publishing and printing process, notices, orders, advertisements, in newspapers, and all other orders and proceedings required by law to be published, shall be at the following rates, viz.: One-dollar per square for the first insertion, and fifty cents per square for each subsequent insertion, and ten lines of nonpareil type, or its equivalent (two hundred and sixty-eight ems), shall constitute a legal square within the meaning of this act.

SEC. 3275. The fees for publishing the delinquent list of lands and town and city lots shall be twenty-five cents for each tract of land or lot advertised to be sold for delinquent taxes, said amount to be added to tax as costs of sale. All fees for advertising lands and lots for delinquent taxes shall be paid as pro-

(d) In civil cases witnesses are entitled to their ferrriage and per diem in every case in which they are summoned, however numerous. *Springfield & Memphis R. R. Co. v. Lambert*, 42-121.

vided by law, and when paid, either in whole or in part, by the collector, the receipt therefor, verified by the certificate of the county clerk as to its correctness, shall entitle the collector to a credit for the amount so certified and receipted in his settlement.

JUDGES AND CLERKS OF ELECTION.

SEC. 3276. The judges and clerks of the elections shall receive one dollar per day for each day they may be engaged in holding an election, to be paid by the order of the county court, as other county expenses.

SEC. 3277. There shall be allowed to each judge of the election carrying the returns from his township to the county clerk, five cents per mile in going and returning from the place of holding the election to the clerk's office, to be paid by the county.

SEC. 3278. The clerks shall certify to the county court the per diem of judges and clerks of election, and the mileage of the judge carrying the returns to the clerk's office for allowance.

COMMISSIONERS TO PARTITION LAND.

SEC. 3279. Each commissioner appointed to partition land shall be allowed:

For each day employed in effecting partition of lands, to be paid by the person making the application
(*Ib.*, *secs.* 47-52).....\$ 1.50

POSTAGE OF ATTORNEY-GENERAL.

SEC. 3280. The attorney-general may make out and certify to the auditor an account of the postage he may have paid in sending out notices and process, and upon letters sent or received by him relating to actions or proceedings in which the state is interested, who shall thereupon issue his warrant on the treasurer for the amount thereof. *Civil Code*, *sec.* 492, *as amended* 1871.

FEE BILLS HAVING THE FORCE OF EXECUTIONS.

SEC. 3281. All officers and witnesses entitled to fees by law for services rendered in any suit, matter or controversy depending in any court of record may make out fee bills for such services at the end of each term of the court wherein the same is pending, charging the party at whose instance the services were rendered.

SEC. 3282. Such fee bill shall be examined by the clerk of the court in which the services were rendered; and, if found correct, the clerk shall certify the fee bill and deliver the same to the sheriff of the proper county, to be by him collected (e). *Act Dec.* 23, 1842, *secs.* 27, 28.

SEC. 3283. When any fee bill shall come to the hands of any sheriff or other officer to be collected, and the person against whom such fee bill is issued shall refuse or fail to pay the amount of such fee bill within twenty days after

(e) This act, being in derogation of the common law, must be strictly construed. The fee bill must show, upon its face, that the party claiming the fees is of one of the classes of persons specified in the act; otherwise it is void, and may be superseded. *Budgett, ex parte*, C—280. See also *Ashley, ex parte*, 3—63; *Lewison, ex parte*, 11—323.

the same shall be presented, such sheriff or other officer may, and shall, levy such fee bill and the amount claimed thereon on the goods and chattels of such person, and expose the same for sale within sixty days from the date of such levy, giving ten days' notice of the time and place of such sale by at least four advertisements, put up in four of the public places in his county; and it shall not be lawful for the person against whom said fee bill is issued to delay the payment of said fee bill in any manner whatever. *Act Jan. 27, 1843.*

SEC. 3284. If any sheriff shall neglect or refuse to levy and collect such fees, and pay over the money when collected to the person entitled thereto, within the time aforesaid, the court shall, upon motion, enter up judgment for the amount of such fee bill against him, and cause execution to issue thereon. *Act Dec. 23, 1842.*

GENERAL PROVISIONS.

SEC. 3285. All officers of this state, whose salary and clerk hire are paid by the state, shall perform all the duties of their offices required of them by the state, without any additional perquisites or fees from the state. *Acts March 21 and 27, 1871.*

SEC. 3286. In all cases where fees are allowed by law according to the number of words, each figure shall be counted as one word.

SEC. 3287. In all cases where any officer or other person is required to perform any duty for which no fees are allowed by any law, he shall be entitled to receive such pay as would be allowed for similar services (f).

SEC. 3288. Each sheriff, coroner and constable, on the return made by him on any writ or other process, shall state at length the time when, the place where, such writ or process was served, and how; otherwise such officer shall not be entitled to demand or receive any fee for the service or execution of the same.

SEC. 3289. Every officer to whom fees are allowed by law shall cause to be set up, in some conspicuous place in his office, and there constantly keep, a fair list or table of his fees hereinbefore prescribed; and, in case of default, any such officer shall forfeit all the fees pertaining to his office, so long as he shall neglect to set up and keep up said fee bill, as aforesaid. *Act Dec. 23, 1842, secs. 23-26.*

SEC. 3290. In case the clerk, or if the costs in any action shall be collected on execution by the sheriff, then the sheriff, shall be unable to collect the entire amount of costs due in any case, such clerk or sheriff shall not first retain therefrom the fees due himself, but shall account for and pay the same *pro rata* to all officers and persons entitled to any portion of the costs so collected. *Civil Code, sec. 775, as amended 1871.*

SEC. 3291. If any party to a suit shall pay any fees allowed by law before final judgment, and the judgment shall thereafter be rendered in his favor, and cost adjudged to him, the amount so paid shall be taxed and indorsed on the execution, and levied and collected by virtue thereof, for the benefit of such party; and all fees which shall not be paid shall be indorsed on the execution, and collected by virtue thereof, for the benefit of the person rendering the

(f) An officer is not entitled to fees for every specific act done by him officially. He can only collect where the law makes provision to pay him. *Crittenden County v. Crump*, 25-235. And the county court is absolutely prohibited from allowing to any officer any fee or allowance not specifically allowed such officer by law. Nor can they allow any officer constructive fees. SEC. 1114.

service, or the same may be collected on fee bills, according to the preceding provisions of this chapter; but only the cost of the prevailing party shall be so taxed on such execution.

SEC. 3292. The clerks of the several courts shall indorse (g) on every execution which they shall issue the fees due to each officer and any other person, and shall, at the time of issuing an execution or fee bill, or of receiving any fees due to them by any party or other person, enter in a book to be kept for that purpose the several items for which they have charged, in words at full length.

SEC. 3293. Every clerk shall deliver to any party or person to whom any fees are due, on demand, a full and complete copy of the entry made in such book, without any compensation for the same.

SEC. 3294. When any suit is instituted against any clerk or officer, for having asked or taken illegal fees, the book referred to in the two preceding sections, and the entries therein, may be given in evidence on the trial.

SEC. 3295. If any officer shall charge, demand or receive any more or greater fees for his services than are allowed by law, or shall demand, charge or receive any such fees without having performed the services for which the same are charged, such officer, for every such offense, shall forfeit to the party injured, or against whom the same may be charged, the amount of fees illegally charged, and five dollars for each item illegally demanded, charged or received, with cost (h). *Act Dec. 23, 1842, secs. 31-35.*

CHAPTER LXIV.

FEES AND EMOLUMENTS OF OFFICE—ACCOUNT OF.

SECTION

- 3296. Record of fees, certain officers to keep.
- 3297. Monthly reports of fees, etc., what state officers to make.
- 3298. State treasurer responsible for what.
- 3299. Record of fees, who may inspect.
- 3300. County, city and township officers, annual reports of, to whom made.
- 3301. Review of reports; appeal, etc.

SECTION

- 3302. Official income, limit of; excess, where paid.
- 3303. Official expenditures; proceedings when report of disapproved.
- 3304. No credit for fees to be given; exception.
- 3305. Estimate of expenditures, approval of, etc.; appeal from disapproval.
- 3306. Penalty for neglect to keep record of fees, etc.
- 3307. Report in case of vacancy.

SECTION 3296. It shall be the duty of each of the following-named officers, viz., the secretary of state, auditor of state, treasurer of state and commissioner of state lands, and of each officer of any county, city, town or village receiving or earning fees or emoluments of office, to keep a record book, in which shall be entered on each day an account of all moneys or other funds received or earned by him, said record showing in each instance by whom, on what account and in what funds such payment was made or said fees were earned.

(g) He is required to make other indorsements. See SEC. 2965.

(h) For penal provisions punishing officers for charging or receiving illegal fees, see SECS. 1760, 1761.

SEC. 3297. The secretary of state, auditor and commissioner of state lands shall each render to the treasurer, on the first day of each month, a statement of the amounts by him earned (*) on account of fees and emoluments of office during the month preceding, and the treasurer shall render to the auditor, in like manner in all respects, monthly statements in detail of the amounts by him received on account of fees and emoluments; and the said secretary of state, auditor, commissioner of state lands and treasurer shall each incorporate in his regular report to the governor for transmission to the general assembly a classified statement of the sums received or earned by him on account of such fees and emoluments since the date of his last report.

SEC. 3298. The treasurer shall be responsible for all moneys and evidences of value in his hands on account of fees and emoluments of office, in the same manner as for the other public moneys, and shall disburse the same only in such manner as may be prescribed by law.

SEC. 3299. The record book of fees of each of the state officers, as set forth in section 3296, shall at all times be open to the inspection of the governor and to that of any of the other state officers; such record book of each of the county officers proper shall at all times be open to the inspection of the judges of the circuit and county courts of the county; such record book of justices of the peace and constables shall at all times be open to the inspection of the judge of the county court of the county; and such record book of each officer of any city, town or village shall at all times be open to the inspection of the mayor or other chief officer of such city, town or village.

SEC. 3300. It shall be the duty of each officer of any county, city, town, village or township who shall come within the purview of this act to make annual report, under oath, beginning at the end of the first year of his term of office and including, in all cases, a final report at the expiration of his term of office, as follows, viz.: the officers proper of each county shall report to the judge of the circuit court of the county; justices of the peace and constables in each county shall report to the judge of the county court of the county; and the officers of each city, town or village shall report to the mayor or other chief officer of such city, town or village: setting forth in each case the total amount of money, and of each separate description of other evidence of value, if any, received by such officer during the year preceding on account of such office, whether from salary, fees or other emoluments or perquisites of such office.

SEC. 3301. The said judge, mayor or other chief officer whose duty it may be to review and approve such report shall determine what has been the average selling market value of each description of evidence of value received during the preceding year, and shall compute, in accordance with and upon the basis of such estimate, the amount of par funds to which the funds so received shall have been equivalent. From the decision of the said reviewing officers therein, the officer reporting shall have an appeal, in like manner as hereinafter provided for, upon the question of approval of expenditures.

SEC. 3302. If the total amount of the receipts of the office shall exceed in par funds, or their equivalent of value, the sum of five thousand dollars, then the officer shall further report the amount expended by him in the conduct of the business of his office for said year, and vouchers for all such expenditures shall be produced by the officer reporting and examined by such judge, mayor

(*) See SEC. 3209.

or other chief officer, and, if such expenditures be approved, the amount thereof shall be deducted from the gross amount of receipts as estimated as hereinbefore prescribed by the reviewing officer, and in all cases where the balance remaining in the hands of any officer shall exceed the sum of five thousand dollars, or its equivalent, the excess shall at once be paid into the treasury of the county, city, town or village to which the said office may be appurtenant.

SEC. 3303. If any expenditure as aforesaid be not approved by the officer to whom the same is submitted, the amount thereof shall not be credited to the officer reporting. But in cases where such disapproval shall be made by any county judge, mayor or chief officer of any city, town or village, the officer making the report may, upon notice given to the attorney, if any there be, of such county, city, town or village, take the matter by appeal before the judge of the circuit court of the county, who shall hear the same *de novo* and shall render final judgment therein; and in case such disapproval shall in the first instance have been made by the judge of the circuit court, then the officer reporting may demand that a jury be impaneled, and the question of the necessity of the expenditure shall be submitted to such jury after evidence heard, and the decision of a majority of such jury upon each item of expenditure shall be deemed the verdict of the jury thereupon, and shall be final in the matter.

SEC. 3304. No officer coming within the purview of this act shall give credit to any person for fees or other emoluments or perquisites of his office unless in cases where parties are permitted by law to give bond for costs, and where such bond shall have been given as by law prescribed; and in case any such prohibited credit shall be given, the amount thereof shall be charged to the officer as cash.

SEC. 3305. Any officer coming within the purview of this act may submit to the officer to whom he is required to make report, as hereinbefore provided, an estimate of the amount of expenditures proposed, and if such estimate be approved by the reviewing officer aforesaid, no further approval of such amount shall be required; nevertheless, the officer making such expenditures shall, with his annual report, make full statement of particulars and produce vouchers showing the manner of expenditure of such amount. If any officer shall submit his estimate of expenditure as herein provided for, and the same shall not be approved, the officer shall have from such decision of disapproval the same right of appeal as is provided in section 3303.

SEC. 3306. Any officer who shall refuse or neglect to keep a record, complying in all particulars with the requirements of this act, or who shall refuse access to said record within reasonable hours to any officer by law entitled to inspect the same, or who shall neglect or refuse to make returns as hereinbefore provided, shall be deemed guilty of a malfeasance, and, upon conviction thereof, shall, for each such offense, be fined in any sum not less than one hundred dollars, and be removed from office. The writ of mandamus shall lie to compel the production to the proper officer of the records and reports herein prescribed. Any officer who shall knowingly and willfully make a false report of the amount received or expended as aforesaid shall be deemed guilty of perjury, and, upon conviction, shall suffer the pains and penalties by law affixed thereto. *Provided*, that nothing herein contained shall be construed to release the officer offending against the provisions of this act from any liability upon his official

bond, to exempt him from the operation of the provisions of section 27, article VII, of the constitution of the state, or to relieve him from prosecution and punishment for the crime of embezzlement.

SEC. 3307. In case any officer shall die or resign, or his office become otherwise vacated before the expiration of the full term thereof, the report of such officer's receipts and expenditures therein, as in this act required, shall immediately, upon such vacation, be rendered for that portion of the year during which the office was by him occupied, and the net amount of money to be credited to such outgoing officer shall be proportioned at the rate of five thousand dollars per year for the said length of time. In case of death of an officer, the report and settlement as therein prescribed shall be made by his executor or administrator, under the same penalties for refusal or neglect to render the same and for false report knowingly and willfully made as are hereinbefore prescribed in the case of an officer so offending. *Act Feb. 1, 1875.*

CHAPTER LXV.

FERRIES.

SECTION

- 3308. What deemed public ferries.
- 3309. Who entitled to the right to keep.
- 3310. What lakes deemed navigable.
- 3311. No person to keep a ferry across a public navigable stream without a license therefor from the county court.
- 3312. How license procured when a stream forms the boundary line of a county.
- 3313. How, when it is the boundary line of the state.
- 3314. License for ferry, how obtained.
- 3315. License tax therefor.
- 3316. Tolls subject to regulation of county court.
- 3317. Rates of toll to be entered on record; clerk to furnish keeper of ferry with copy thereof.
- 3318. Keeper of ferry to give bond; condition thereof.
- 3319. Upon payment of tax and execution of bond, license to be granted.

SECTION

- 3320, 3321, 3322. Ferry may be put in operation before license granted, when; proceedings in such cases.
- 3323. All ferry privileges to be taxed; exception.
- 3324. Clerk to issue license and deliver to sheriff.
- 3325, 3326, 3327. Duty of sheriff to collect tax and settle therefor.
- 3328. Ferry privilege, when and to what extent exclusive.
- 3329, 3330, 3331. Liability of ferryman for neglect of duty; proceedings.
- 3332. To keep rates of toll posted up.
- 3333. Penalty for neglect of this duty.
- 3334. Sureties of ferryman liable for all recoveries against him, when.
- 3335. Penalty for taking toll without having a license.
- 3336. A public ferry may be established on a private stream, when.

SECTION 3308. All ferries upon or over any public navigable stream shall be deemed public ferries.

SEC. 3309. Every person owning the land fronting on any public navigable stream shall be entitled to the privilege of keeping a public ferry over or across such navigable stream; if he own the lands on both sides or banks, or if he shall have possession of both sides or banks, by pre-emption or settlement right, he shall be entitled to the sole and exclusive right of ferriage at such place; if he own the lands on one side only, or have possession thereof, by pre-emption or settlement right, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, and making the landing and road up said opposite bank, and

keeping the same at all times in good repair and condition for ascending and descending (a).

SEC. 3310. All lakes that have been meandered in making the public surveys of the United States' lands, and retained as public property by the United States, shall be deemed public navigable streams within the meaning of this chapter.

SEC. 3311. No person shall keep any ferry over or across any public navigable stream or lake, so as to charge any compensation for crossing the same, without first procuring a license from the county court of the county in which such ferry is situated (b).

SEC. 3312. If any navigable stream or lake shall form a portion of the boundary of any county, so that one bank shall be in one county and the other in a different county, at the place where it is proposed to erect a ferry, then a license shall be had from the county court for the ferry on their respective banks or shores.

SEC. 3313. When a navigable stream makes a part of the boundary line of this state, if any tax or charge shall be assessed or collected by any such adjoining state for the privilege of a ferry landing on the shore or bank of such state from this state, then the same tax or duty shall be assessed and collected for like privilege of landing on the banks or shores of this state.

SEC. 3314. Any person wishing to establish a ferry across any navigable stream shall apply to the county court of the county in which such ferry site may be; and, on the applicant showing that he is lawfully in possession of such land as the ferry is sought to be established on, and also satisfying the court that the public convenience will be promoted thereby, such court shall grant such license.

SEC. 3315. Before any ferry shall be established, the court shall determine what tax shall be paid by such applicant for the privilege of such ferry, which shall not be less than one dollar nor more than one hundred dollars. *Rev. Stat., chap. 62, secs. 1-8.*

SEC. 3316. The toll of ferries that are now, or hereafter may be, established shall at all times be subject to regulation by the county court. *Act April 3, 1873, sec. 20.*

(a) A valid pre-emption right to the land lying on one bank only of a river does not entitle the owner to the exclusive privilege of keeping a public ferry. Such right, accompanied by possession, would entitle him, under the restrictions in this chapter, to the privilege of having a public ferry from the shore on which his own land was situated. *Cloys v. Keatts*, 18-19.

As to what will be held a relinquishment of a ferry privilege, see *Brearily v. Norris*, 23-514.

See same case as to the right of a widow before assignment of dower, where the ferry landing is on the farm attached to the mansion.

(b) A county court, composed of the county judge and justices of the peace, has no jurisdiction to establish ferries. *John B. Howell, in matter of Free Ferries*, 36-466.

A ferry franchise is the creature of sovereign power, and no one can exercise it without the consent of the state, and when granted in terms exclusive it can not be violated, and if it be, the court of chancery may be resorted to successfully. *Murray v. Menifee*, 20-561.

The ownership of the soil on a navigable stream does not necessarily entitle the owner to a public ferry franchise. He can exercise no such privilege until the right to do so is conferred by the proper authority. *Bell v. Clegg*, 25-26.

The right to a ferry franchise is limited by statute to the owner or party rightfully in possession of the land on the stream, and the right to a ferry franchise can not be sold and transferred, and is not descendable, separate and apart from the real estate wherewith it was allowed.

Whether the establishment of the ferry is for the public convenience, except where inhibited by statute, is a question for the county court, and its decision is absolutely binding upon every one, unless appealed from. *Haynes v. Wells*, 26-464, and see *Lindsay v. Lindley*, 20-573. See *L. R. & F. S. Railway v. McGhee*, 41-209.

SEC. 3317. The court shall state, on its record, the rates of toll which may be demanded for ferrying passengers, carriages, wagons, carts, beasts, and such other property as is usually transported by ferries. The clerk shall make out a copy of such ferriage rates, under his official signature, and give to the person procuring such license (c). *Rev. Stat., chap. 62, sec. 9.*

SEC. 3318. The county court shall have authority, and it is required, to compel all persons who now are, or hereafter shall be, authorized to keep a public ferry to give bond and good security, in such sum as the court may deem sufficient, to the judge of the county court and his successors in office, conditioned that he will constantly find, provide and keep good and sufficient boats, or other proper crafts, in constant good repair, and the banks on either side of the creek or water-course that may be ferried in good condition, and that said ferry shall always be so attended as to pass all persons, and their horses and other stock, carriages and effects, in safety and without detention, and that he will comply with all the requisitions of the law relating to or governing public ferries. *Act April 3, 1873, sec. 19, and Rev. Stat., chap. 62, secs. 11, 21.*

SEC. 3319. Upon the payment of the tax levied by the county court for the privilege of such ferry, and executing the bond required by law, such court shall grant a license to such applicant for the term of one year from the date of such license. *Rev. Stat., chap. 62, sec. 12.*

SEC. 3320. Any person wishing to put into operation any public ferry, and the county court not being in session, may do so by putting up an advertisement at such ferry, stating that he intends to apply to the next term thereof for a license for such ferry; and he may charge and receive the usual rates of ferriage until such court shall meet. *Ib., sec. 13.*

SEC. 3321. The county court, in cases where ferries have been put in operation in vacation by advertisement, shall grant to such person a license at the next term thereof, on his applying for the same and complying with the law as in cases of other ferries, which shall relate back and be for one year from the time of putting such ferry in operation by advertisement. *Ib., sec. 14.*

SEC. 3322. Any person putting a ferry across any navigable stream in operation by advertisement, who shall fail or neglect, at the next term of the county court, to apply for such license, and in all respects to comply with the orders of the court in respect thereto, shall, by notice served on him by order of the court, be required to appear at its next term and show cause, if any he can, why he should not be fined. If no sufficient legal reason be shown, he shall be fined by such court in any sum not exceeding thirty dollars, and such proceedings shall be had without the necessity of formal pleadings. *Ib., sec. 15.*

SEC. 3323. It shall be the duty of the county courts to levy a tax on all ferry privileges in their respective counties, whether application be made by any person for the same or not. *Provided, however,* that no ferry at which the public county road does not cross shall be subject to the tax herein provided. *Act Feb. 2, 1843, sec. 2.*

SEC. 3324. It shall be the duty of the clerk of the county court, immediately after the assessment of any tax for ferry privileges by the court, to issue a license for the ferryman to whom such privileges were granted, and to deliver

(c) The fixing of the rates of ferriage by the court is for the protection of the public against an abuse of the franchise. *Kelly v. Altemus*, 34—184. See note (g) *post*.

the same to the sheriff, and charge him with the amount thereof, in the same manner that he is required to be charged with other county revenue. *Ib.*, sec. 3.

SEC. 3325. It shall be the duty of the sheriff to present the licenses named in the foregoing section to the proper ferryman within twenty days after they are issued, and if the amount thereof is not paid, the sheriff shall retain the same; and, in twenty days thereafter, if the amount is still unpaid, it shall be the duty of the sheriff to levy on and sell the property of such ferryman to satisfy the amount of his ferry tax, in the same manner and under the same restrictions as lands and tenements, goods and chattels, are required to be levied on and sold under executions on judgments at law. *Ib.*, sec. 4.

SEC. 3326. If sufficient property of such ferryman can not be found to make the amount of his ferry tax, it shall be the duty of the sheriff to return a statement of the facts to the next term of the county court, whose duty it shall be to order a *scire facias* issued against the securities of such ferryman, returnable to the next term of the court; and, if sufficient cause shall not be shown to the contrary, the court shall order judgment against his securities for the amount found due, with all costs. *Ib.*, sec. 6.

SEC. 3327. The sheriff shall settle for the amount collected by him for ferry tax in the manner and at the time that he is required to settle for other revenue of the county. *Ib.*, sec. 7.

SEC. 3328. The county court shall not permit any ferry to be established within one mile above or below any ferry previously established, except at or near cities and towns, where the public convenience may require it, and satisfactory proof of the same shall be first adduced (d). *Ib.*, sec. 8.

SEC. 3329. If any person shall sustain damage by reason of any ferryman not having complied with the conditions of his bond, the person sustaining such damage may bring suit against such ferryman on such bond, in the name of the judge of the county court, and recover for such non-performance of the said conditions so much damage as he shall appear to have sustained (e). *Act April 3, 1873, sec. 19.*

SEC. 3330. Any person detained at any public ferry by reason of such ferryman not having sufficient boats or other proper crafts, and hands to work the same, or by neglecting his duty in any way, may make application to some justice of the peace, in the township where the ferry is located, for a warrant of arrest; and said justice is hereby required to issue the same, and impose such fine on such ferryman, not exceeding twenty-five dollars, as to such justice may seem just and equitable (f). *Ib.*

SEC. 3331. Such fine shall not extend to or be deemed a bar to any action for personal damages sustained by any person by reason of the insufficiency of the said ferry or boats. *Ib.*

SEC. 3332. Every keeper of such ferry shall keep constantly posted up in some conspicuous place at such ferry the rates of toll allowed to be charged. If

(d) See *Lindsay v. Lindley*, 20—573. County courts have power to establish free ferries, but not at or within the prohibited distance of the licensed ferry of another. *Howell, in matter of Free Ferries*, 36—466.

(e) The sureties of a ferryman are liable for all recoveries against him for the violation of any duty imposed upon him by law upon a return of *nulla bona* against him. See SEC. 3334.

As to the liabilities of ferrymen for the loss or injury of property in its transportation by them, and the measure of damages in such cases, see *Harvey v. Rose*, 26—3; *Evans & Shinn v. Rudy*, 34—383.

The right of action provided by statute on the bond of a ferry-keeper does not preclude a resort to the common law action for negligence. *Wells v. Steele*, 31—219.

(f) See *Jabine & Woodruff v. Midgett*, 25—474.

any ferryman fail or neglect so to do, he shall forfeit and pay the sum of four dollars for every such neglect; each day that such ferry rates are not so posted up shall constitute a separate offense, which sum may be recovered in a civil action, one-half for the use of the informer and the other half to the school fund. *Act April 3, 1873, sec. 20, and Rev. Stat., chap. 62, sec. 18.*

SEC. 3333. Should any keeper of a ferry presume to charge or demand more than what the county court may have allowed, he shall forfeit and pay for every such offense the sum of ten dollars, to be recovered by civil action by any person of whom such demand may be made (g). *Act April 3, 1873, sec. 20.*

SEC. 3334. In all cases of recoveries against ferrymen for violations of this chapter, if, after judgment, execution shall be returned that there are not goods and chattels of such ferryman whereon to levy and make the money demanded in such execution, a *scire facias* may issue against the securities of such ferryman; and, if such securities do not show sufficient reason to the contrary, judgment shall be rendered against such securities for such amount of debts as may be unsatisfied. *Rev. Stat., chap. 62, sec. 20.*

SEC. 3335. If any person shall keep any ferry over any navigable stream, for which he shall charge any person any money or any other valuable thing, without complying with the provisions of law in relation to obtaining license, he shall forfeit and pay to every other person having a licensed ferry on the same stream or lake, in the same county, five dollars for every person so ferried, and the same sum for every wagon or other article so transported, which may be the subject of a separate charge, to be sued for and recovered by civil action, founded on this statute, with costs of prosecution. *Ib., sec. 19.*

SEC. 3336. Where a public road crosses any private stream which has not been meandered as a navigable stream, the bed of which may belong to any individual, if, in the opinion of the county court, the public convenience will be promoted thereby, such court may make an order upon its record to that effect, declaring such crossing to be a public ferry; and, when so declared by the court, such ferry shall be and remain a public ferry during the pleasure of such court, and be subject to all the regulations and restrictions that are made by law applicable to public ferries on navigable streams. *Ib., sec. 21.*

(g) A ferryman can not charge, as a common carrier, for the contents of a wagon separately from the wagon itself. *Kelly v. Altemus*, 34—184.

CHAPTER LXVI.

FIELD NOTES AND TOWNSHIP MAPS (*).

SECTION

3337. Land commissioner to receive and receipt for records of surveyor-general.

3338. Said records to be records of land office; who to have access to.

3339, 3340. Transcripts of to be evidence.

SECTION

3341. Who allowed to make extracts from.

3342. County court may procure and pay for; where lodged.

3343, 3344, 3345. Clerk to furnish copies, fee for; report of fees; portion to county.

SECTION 3337. The state land commissioner is hereby authorized to receive from and receipt to the proper officer, or officers, of the United States, for the field notes, maps, records and other papers appertaining to the surveys of the public lands and land titles in this state, formerly in the office of the surveyor-general of the district comprising said state.

SEC. 3338. When said field notes, maps, records and other papers are received and receipted for, as aforesaid, they shall become a part of the public records of the state land commissioner, and, under the authority and direction of the commissioner of the general land office of the United States, any deputy surveyor or other agent of the United States shall have free access to any such field notes, maps, records and other papers, for the purpose of taking extracts therefrom, or making copies thereof, without charge of any kind.

SEC. 3339. All certified transcripts from said field notes, maps, records and other papers, from the office of the state land commissioner, shall be received in evidence in all courts of this state in the same manner and with like effect as the originals.

SEC. 3340. Any certified copy, extract, entry or entries, of said field notes, maps, records or other papers, properly certified by the state land commissioner, shall be received in evidence in all courts of this state in the same manner as if the copy of the entire field notes, maps, records or other papers had been produced.

SEC. 3341. No person or persons, except deputy surveyors, or other agents of the United States, the state land commissioner, and the clerks in his office, shall be allowed to make extracts from or copies of said archives. *Provided*, that all persons may have the right to inspect the same under the supervision of said commissioner, or the clerks in his office. *Act Feb. 23, 1881, secs. 1-5.*

SEC. 3342. The county courts are empowered to procure the field notes and township maps of the lands in their respective counties, and may procure the same from the office of the commissioner of state lands; and such field notes and maps so procured, and certified to by the commissioner, shall be lodged in the office of the county clerk. The county courts are authorized to make the necessary appropriation to pay the expenses of procuring such field notes and maps.

(*) For fees to be paid into the state treasury for copies of field notes, etc., see SEC. 3232.

SEC. 3343. The clerk shall furnish, when called on by any person, a copy of said field notes and maps.

SEC. 3344. He shall be allowed the sum of fifty cents for each copy containing three hundred and twenty acres, or less; where such copy contains more, an additional charge of fifty per centum on such enlargement.

SEC. 3345. He shall make a true report of all moneys collected by him for such copies to the county courts at settlement term in each year, and said courts shall charge him thirty per cent. on such money, and order the sheriff to collect the same and pay it over to the county treasurer. *Acts Dec. 21, 1846, and Dec. 6, 1854.*

CHAPTER LXVII.

FORCIBLE ENTRY AND DETAINER.

SECTION

- 3346. Lawful entry upon lands, what is.
- 3347. Forcible entry and detainer defined.
- 3348. Unlawful detainer defined.
- 3349. All estates comprehended in preceding section.
- 3350. Such entries and detainers made cognizable before the circuit courts.
- 3351. On complaint filed, writ to issue.
- 3352. Bond required before execution of writ.
- 3353. Condition of bond.
- 3354. Bond to be filed with clerk.
- 3355. Execution of writ by sheriff; bond of defendant to retain possession, etc.
- 3356. Return of writ.
- 3357. Bond may be excepted to by defendant.
- 3358. Judgment on bond being found insufficient.
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- 3361. Judgment of court on trial.
- 3362. Damages of plaintiff; assessment and judgment for.
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- 3365. Title to premises not to be adjudicated.
- 3366. Three years' possession may be pleaded in bar.
- 3367. Nothing in this act to bar actions for trespass, etc.
- 3368. Plaintiff may proceed under this act by summons without affidavit or bond.
- 3369. No cross action allowed for possession while action under this act is pending, except ejectment.
- 3370. Plaintiff in ejectment pending at passage of this act not to dismiss and proceed under it.

SECTION 3346. No person shall enter into or upon any lands, tenements or other possessions and detain or hold the same, but where an entry is given by law, and then only in a peaceable manner.

SEC. 3347. If any person shall enter into or upon any lands, tenements or other possessions, and detain or hold the same with force and strong hand, or with weapons, or breaking open the doors and windows or other parts of the house, whether any person be in or not; or by threatening to kill, maim or beat the party in possession; or by such words and actions as have a natural tendency to excite fear or apprehension of danger; or by putting out of doors or carrying away the goods of the party in possession; or by entering peaceably and then turning out by force; or frightening by threats or other circumstances of terror the party to yield possession; in such case every person so offending shall be deemed guilty of a forcible entry and detainer within the meaning of this act (a).

(a) Forcible entry and detainer is a tort, pure and simple. The remedy is designed to protect the actual possession, whether rightful or wrongful. It must be shown that the defendant entered without the consent

SEC. 3348. When any person shall willfully and with force hold over any lands, tenements or other possessions after the determination of the time for which they were demised or let to him, or shall lawfully and peaceably obtain possession, but shall hold the same unlawfully and by force, or shall fail or refuse to pay the rent therefor when due, and after demand made in writing for the delivery of possession thereof, by the person having the right to such possession, his agent or attorney, shall refuse to quit such possession, such person shall be deemed guilty of an unlawful detainer (b).

SEC. 3349. The preceding sections of this act shall extend to and comprehend all estates, whether freehold or less than freehold.

SEC. 3350. The aforesaid forcible entries and detainers, and forcible and unlawful detainers, are hereby made cognizable before the circuit court of any county in which any such offenses may be committed.

SEC. 3351. When any person to whom any cause of action shall accrue under this act shall file in the office of the clerk of the circuit court of the county in which the offense shall be committed a complaint or statement in writing, signed by him, his agent or attorney, specifying the lands, tenements or other possessions so forcibly entered and detained, or so unlawfully detained over, and by whom and when done, and shall also file the affidavit of himself or some other creditable person for him, stating that the plaintiff is lawfully entitled to the possession of the lands, tenements or other possessions mentioned in the complaint, and that the defendant forcibly entered upon and detains the same, or unlawfully detains the same after lawful demand therefore made, such clerk shall issue a writ of possession, directed to the sheriff, commanding him to cause (if the plaintiff give security according to law) the possession of the lands, tenements or other possessions in the complaint mentioned to be delivered to the plaintiff without delay, and to summon the defendant to appear in court on the return day of the writ and answer the plaintiff in the premises (c).

SEC. 3352. The writ of possession specified in the foregoing section shall not be executed in any case unless the plaintiff, or some other person in his behalf, shall execute a bond to the sheriff or other person in a sum at least double the value of the property specified in the writ, which value shall be ascertained by the oath of one or more witnesses to be sworn and examined by the sheriff or other officer.

SEC. 3353. Such bond shall be conditioned that the plaintiff will prosecute his suit to effect and without delay, and if the defendant recover judgment against him in the action he will restore the possession of the lands, tenements or other possessions in the complaint mentioned, if restitution thereof be

of the person in actual possession, and that the entry or subsequent holding of possession was with force. *Johnson v. West*, 41—535. A peaceable entry, though unlawful, is not sufficient. *Ib.* See *Anderson v. Mills*, 40—192.

Force is the gist of the action, and it must be actual and hostile. *Hall v. Trucks*, 38—257. The object of the statute is not to try rights of property, but to preserve peace. *Littell v. Grady*. *Ib.*, 584.

(b) Unlawful detainer will not lie save where the relation of landlord and tenant exists. *Dortch v. Robinson*, 31—296; *Necklace v. West*, 33—682. Proof that defendant was the tenant at will of the plaintiff, demand of possession and refusal, are sufficient to maintain the action. *Brockway v. Thomas*, 36—518.

It is a remedy for the benefit of landlords against tenants who hold over after the expiration of their term. It is founded on the breach of a contract implied by law, if not expressed, and may be maintained either by the lessor, his heir or assignee, to whom the land passes. *Johnson v. West*, 41—535. See *Buckner v. Warren*, *Ib.*, 532.

(c) Where the names of the parties are omitted from the writ it may be amended. *Galbreath v. Mitchell*, 32—278.

adjudged, and will pay the defendant all such sums of money as may be recovered against him by such defendant in the action for any cause whatever.

SEC. 3354. In all cases of forcible entries and detainers, and forcible and unlawful detainers, where the sheriffs have taken or may hereafter take bond, it shall be their duty, on return of the writ of possession, to file such bond with the clerk of the circuit courts in their counties, which bond shall be filed by such clerk, and become a part of the record in such cause. *Provided*, that such bond shall be and remain subject to all the conditions now prescribed by law. *Act March 2, 1875, secs. 1-9.*

SEC. 3355. Upon the receipt of such writ and obligation before required, the sheriff shall forthwith proceed to execute said writ by delivering the possession of the premises therein named to the plaintiff or his authorized agent, and summon said defendant according to the terms of the writ. *Provided*, if the said defendant shall express a desire to retain possession of said premises, the said sheriff shall give said defendant ten days' time within which to make his bond, with sufficient securities, in an amount equal to that named in plaintiff's bond, and conditioned that he will deliver to the plaintiff the possession of the premises, together with the costs and damages awarded to the plaintiff, if so decreed by the court; and if the same is so tendered, within the said ten days, such sheriff shall take such bond and leave the possession with the defendant, and he shall return said bond, together with the other papers, to the court issuing the same. *Act March 2, 1875, sec. 10, as amended by act Dec. 13, 1875.*

SEC. 3356. The sheriff shall return the writ at or before the return day thereof, and shall state in his return in what manner he executed the same; also the names of the persons who were securities in the bond taken by him from the plaintiff, with their places of residence, and if the possession of the lands, tenements or other possessions mentioned in the writ has not been delivered to the plaintiff, he shall also state in his return the cause of his omission to make such deliverance.

SEC. 3357. The defendant in any action of forcible entry and detainer, or forcible and unlawful detainer, may except to the bond of the plaintiff, taken by the sheriff on the receipt of the writ, within the first two days of the court at which such writ is made returnable.

SEC. 3358. If such bond be adjudged insufficient, and a new bond shall not be filed within such time as may be prescribed by the court, judgment of discontinuance shall be rendered against the plaintiff, and such other judgment as the nature of the case may require, in order to restore to the defendant the possession of the estate and to compensate him for his damages.

SEC. 3359. If exceptions shall have been made, and judgment of discontinuance shall have been rendered against the plaintiff, in consequence of his failure to file a new bond when the securities have been adjudged insufficient, the sheriff shall be liable to the defendant for such deficiency in the security.

SEC. 3360. If no exceptions be taken to the securities in the bond given by the plaintiff, as herein provided for within the time specified in this act, or they be adjudged sufficient, the sheriff shall be discharged from all liability for the sufficiency of such securities, and the bond of the plaintiff shall be assigned to such defendant or his personal representative if judgment be rendered for him in such action.

SEC. 3361. If, on the trial of any action under this act, the verdict is for the plaintiff, the court shall give judgment thereon for the costs, and award execution as in other cases; and, in case the verdict is for the defendant, the court shall give judgment thereon, with costs, and shall also issue a writ of restitution, directed to the sheriff, to cause the defendant to be repossessed, to which shall be added a clause commanding the sheriff to levy the costs of the goods, chattels, lands and tenements of the plaintiff. *Act March 2, 1875, secs. 11-16.*

SEC. 3362. In all cases of forcible entry and detainer, and forcible and unlawful detainers, when the defendant gives bond to retain possession of the lands and premises mentioned in the writ and declaration in the cause as provided by law, it shall be lawful for the plaintiff to introduce before the jury trying the main issue in such action evidence showing the damage he may have sustained in being kept out of possession of said lands and premises, and the jury, if they find the issue for the plaintiff, shall at the same time assess what damages, if any, the plaintiff has sustained in being kept out of possession by the defendant, and the court shall render judgment restoring the property to the plaintiff, as now prescribed by law, and shall also render judgment against the defendant and his security in the bond for damages as found by the jury, as well as the cost of suit (d). *Act Feb. 8, 1883.*

SEC. 3363. In all cases of forcible entry and detainer, and forcible and unlawful detainers, where the defendant disputes the plaintiff's right of possession, it shall be lawful for such defendant to introduce before the jury trying the main issue in such action evidence showing the damage he may have sustained in being dispossessed of the lands and premises mentioned in the writ and declaration in the cause, and the jury, if they find the issue for the defendant, shall at the same time find what damage the defendant has sustained by being dispossessed under the provisions of this act, and the court shall render judgment restoring the property to the defendant, as now prescribed by law, and shall also render judgment against the plaintiff and his security in the bond for damages as found by the jury, as well as the cost of suit.

SEC. 3364. In all actions under this act, the defendant may be found guilty as to part and not guilty as to the balance of the charge, as laid in the plaintiff's complaint.

SEC. 3365. In trials under the provisions of this act, the title to the premises in question shall not be adjudicated upon or given in evidence, except to show the right to the possession, and the extent thereof (e).

SEC. 3366. Three years' peaceable and uninterrupted possession of the premises immediately preceding the filing a complaint under the provisions of this act may be pleaded by any defendant in bar of the plaintiff's demand for possession.

SEC. 3367. Neither the judgment nor anything in this act shall bar or preclude the party injured from bringing his action of trespass or ejectment or other action against the aggressor or party offending.

(d) Damages can not be enhanced by proof of loss of profits in the plaintiff's business. *Brockway v. Thomas*, 36—518.

(e) See *Anderson v. Mills*, 40—132.

SEC. 3368. Nothing herein contained shall be construed to prevent any party from proceeding under this act by filing his complaint and causing an ordinary summons to be issued without filing the affidavit or giving the obligation hereinbefore required, and in all such cases, when the judgment shall be for the plaintiff, the court shall award him a writ of restitution to carry such judgment into execution (†).

SEC. 3369. No cross-action or actions for the recovery of the possession of premises in litigation by the defendant, or any person claiming under him, against the plaintiff or his lessee shall be brought under this act during the pendency of the first action. *Provided, however,* that nothing herein shall preclude such party from instituting and prosecuting an action of ejectment for the premises during the pendency of an action under this act.

SEC. 3370. Nothing herein contained shall be so construed as to authorize any plaintiff in an action of ejectment now pending to dismiss such action of ejectment, and institute an action under this act. *Act March 2, 1875, secs. 17-24.*

CHAPTER LXVIII.

FRAUDS—STATUTE OF.

SECTION

- 3371. What contracts not valid without memorandum in writing.
- 3372. What contracts for sale of goods not binding, unless.
- 3373. Gifts, etc., of goods and chattels, when and as to whom void.
- 3374. Conveyances, etc., to defraud creditors, void.
- 3375. Not void in favor of subsequent purchasers, when.
- 3376. Gifts, etc., not on consideration good in law, void, unless.

SECTION

- 3377. Pretended loans of goods, etc., when void.
- 3378. What conveyances void until deposited in recorder's office, etc.
- 3379. Act, what not extend to.
- 3380. Leases, etc., not in writing, effect of.
- 3381. Leases, etc., how assigned.
- 3382. Trusts or confidences, to be in writing.
- 3383. But not when they arise by implication of law.
- 3384. Promise to pay debt contracted during infancy must be in writing.

SECTION 3371. No action shall be brought:

First. To charge any executor or administrator, upon any special promise, to answer for any debt or damage out of his own estate.

Second. To charge any person, upon any special promise, to answer for the debt, default or miscarriage of another (a).

Third. To charge any person upon an agreement made in consideration of marriage (†).

Fourth. To charge any person upon any contract for the sale of lands, tenements or hereditaments, or any interest in or concerning them (b).

(†) See *Walker v. McGill*, 40—38.

(a) See *Kurtz v. Adams*, 12—174; *Hughes v. Lawson*, 31—613; *McGill v. Dowdle*, 33—311; *Brown v. Harrell*, 40—429; *McTighe v. Herman*, 42—285. The parol promise of a corporation to pay debts contracted before its incorporation is within the statute. *Little Rock & Ft. Smith R. R. Co. v. Perry*, 37—164. An agreement on a new consideration is not within the statute. *Conger v. Cotton*, *Id.*, 286.

(†) See *Galbreath v. Cook*, 30—417.

(b) Concerning parol contracts for the sale of land, see *Keatts v. Rector*, 1—391; *Baker v. Hollobaugh*, 15—322; *Hemphill v. Miller*, 16—271; *Underhill v. Allen*, 18—466; *Wynn v. Garland*, 19—23; *Pindall v. Trevor*, 30—249;

Fifth. To charge any person upon any lease of lands, tenements or hereditaments for a longer term than one year (†).

Sixth. To charge any person upon any contract, promise or agreement that is not to be performed within one year from the making thereof, unless the agreement, promise or contract upon which such action shall be brought, or some memorandum or note thereof, shall be made in writing, and signed by the party to be charged therewith, or signed by some other person by him thereunto properly authorized.

SEC. 3372. No contract for the sale of goods, wares and merchandise, for the price of thirty dollars or upward, shall be binding on the parties unless, first, there be some note or memorandum, signed by the party to be charged; or, second, the purchaser shall accept a part of the goods so sold, and actually receive the same; or, third, shall give something in earnest to bind the bargain, or in part payment thereof (c). *Rev. Stat., chap. 30, secs. 1, 2.*

SEC. 3373. Every deed of gift and conveyance of goods and chattels in trust, to the use of the person so making such deed of gift or conveyance, is declared to be void as against creditors existing and subsequent purchasers.

SEC. 3374. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods and chattels, or things in action, or of any rents issuing therefrom, and every charge upon lands, goods or things in action, or upon the rents and profits thereof, and every bond, suit, judgment, decree or execution, made or contrived with the intent to hinder, delay or defraud creditors or other persons of their lawful actions, damages, forfeitures, debts or demands, as against creditors and purchasers prior and subsequent, shall be void (d).

SEC. 3375. No such conveyance or charge shall be deemed void in favor of an innocent subsequent purchaser, if the deed or conveyance shall have been duly acknowledged or proved and recorded, or the purchaser have actual notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was party or privy to the fraud intended (†).

McMurray v. Mobley, 39—309; *Venable v. Brown*, 31—561; *Anthony v. Hunt*, 31—481; *McNeil v. Gates*, 41—264; *Holt v. Moore*, 37—145. Delivery of possession under a parol contract for the sale of land takes the case out of the statute. *Pledger v. Garrison*, 42—246.

(f) Agreements to repair or rebuild are not required to be in writing. *Halbut v. Forrest City*, 34—246.

(c) Where property is obtained by one person from another by a felonious act, as by a purchase with counterfeit coin, the right of property does not pass, and the owner may recover back the property. *Pheasant, adm., v. Dalson*, 14—79.

As to the validity of a conditional sale, right of purchaser from vendee, etc., see *Carroll v. Wiggins*, 30—402; *Blackwell, Thompson & Co. v. Walker Bros.*, 2 *McCrary*, 33.

(d) The law will not relieve either party from an executed contract, or aid either to enforce an executory contract, made to defraud creditors. *Payne v. Bruton*, 10—53. See *Ringold v. Waggoner*, 14—69.

As to when creditor may sue to set aside a fraudulent conveyance, see *Hunt v. Weiner*, 39—70.

There is no fraud in selling goods at cost, leaving the price to be ascertained by inventory. *Flask v. Tindall*, *Ib.*, 571.

Nor in taking them in satisfaction of a mortgage on a homestead. *Ib.*

As to purchase of assets of a corporation by a director, see *Jones v. Ark. Mech. and Ag. Co.*, 38—17.

Fraud is never presumed. *Toney v. McGehee*, *Ib.*, 419. A creditor attacking a voluntary conveyance must either show that fraud was intended or that the debtor owed debts at the time which still remain unpaid. *Ib.*

One who is not a creditor is not in condition to ask chancery to set aside an alleged fraudulent conveyance. *King v. Clay*, 34—291.

The assignee in a fraudulent assignment is chargeable with notice of its contents. *Hunt v. Weiner*, 39—70.

As to what must be proved by a judgment creditor who assails as fraudulent his debtor's conveyance made before the creation of his debt, see *Cunningham v. Williams*, 42—170.

(†) See *Daniel & Strauss v. Vaccaro*, 41—316.

SEC. 3376. Every gift of goods and chattels, and all other conveyances of the same, not on consideration deemed good in law, shall be void as against all creditors and purchasers; and all such gifts, grants and conveyances shall be void even against the the grantor, unless possession really and *bona fide* accompany such gift or conveyance.

SEC. 3377. Where any goods or chattels shall be pretended to have been loaned to any person with whom, or those claiming under him, possession shall have remained for the space of five years, without demand made and pursued by due process of law, on the part of the pretended lender; or where any reservation or limitation shall be pretended to have been made of any use of property, by way of condition, reservation or remainder in another, the same shall be taken, as to all creditors and purchasers of the persons so remaining in possession, to be void, and that the absolute property is with the possession, unless such loan, reservation or limitation of the use or property were declared by will or deed in writing, proved or acknowledged and recorded, as required by this chapter (e).

SEC. 3378. No conveyance required by the provisions of this act to be recorded shall be valid or binding, except between the parties and their legal representatives, until the same shall have been deposited in the recorder's office for record; nor even then if shown to be made with intent to defraud prior creditors or purchasers, but shall be void against such prior creditors or purchasers.

SEC. 3379. This act shall not extend to any estate or interest in any lands or tenements, goods or chattels, or any rents or profits out of the same, which shall be upon a valuable consideration and *bona fide* and lawfully conveyed; nor shall this act be construed to avoid any deed or sale to a subsequent *bona fide* purchaser from the grantee for valuable consideration, and without any notice of fraud.

SEC. 3380. All leases, estates, interest of freeholds, or lease of years, or any uncertain interest of, in, to or out of any messuages, lands or tenements, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater effect or force than as leases not exceeding the term of one year.

SEC. 3381. No leases, estates or interest, either of freehold or of term of years in, to or out of any messuages, lands or tenements, except leases for a term not exceeding one year, shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or notice in writing, signed by the party so assigning, granting or surrendering the same, or by their agents lawfully authorized by writing or by operation of law.

SEC. 3382. All declarations or creations of trusts or confidences of any lands or tenements shall be manifested and proven by some writing signed by the party who is or shall be by law enabled to declare such trusts, or by his last will in writing, or else they shall be void (f); and all grants and assignments of any trusts or confidences shall be in writing, signed by the party granting or assigning the same, or by his last will in writing, or else they shall be void.

(e) See *State Bank v. Williams*, 6—156; *Blackwell, Thompson & Co. v. Walker Bros.*, 2 *McCrory*, 33.

(f) See *Gainus v. Cannon*, 42—503.

SEC. 3383. Where any conveyance shall be made of any lands or tenements, by which a trust or confidence may arise or result by implication of law, such trust or confidence shall not be affected by any thing contained in this act. *Rev. Stat., chap. 65.*

SEC. 3384. No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith. *Rev. Stat., chap. 91, sec. 34.*

CHAPTER LXIX.

FUGITIVES FROM JUSTICE.

SECTION

ARREST OF FUGITIVES FROM JUSTICE UPON REQUISITION.

- 3385. Arrest upon requisition.
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ARREST OF FUGITIVES FROM JUSTICE BEFORE REQUISITION.

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- 3392. Examination before judge or justice.
- 3393. Executive, when to notify executive of other state or territory.

SECTION

3394. Warrant of executive, on demand thereafter made.

- 3395. If bailed, to be arrested on such warrant.
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FUGITIVES FROM THE JUSTICE OF THIS STATE.

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ARREST OF FUGITIVES FROM JUSTICE UPON REQUISITION.

SECTION 3385. Whenever the executive of any other state or any territory of the United States shall demand of the executive of this state any person as a fugitive from justice, having complied with the requisitions of the act of congress in that case made and provided (a), it shall be the duty of the executive

(a) See *Const. of United States, art. IV, and note (kk) thereto.* The following is the act of congress on this subject:

"SECTION 1. Whenever the executive authority of any state in the Union, or of either of the territories, north, west or south of the River Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory, to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority, appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged, and all costs or expenses incurred in apprehending, securing and transmitting such fugitive to the state or territory making such demand shall be paid by such state or territory.

"SEC. 2. Any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled; and if any

of this state to issue his warrant, under the seal of the state, directed to any sheriff, coroner or other person whom he may think fit to intrust with the execution of such warrant.

SEC. 3386. Such warrant shall authorize the person to whom it may be directed to arrest the fugitive anywhere within the limits of this state, and to convey him to any place within the state which the executive may, in his warrant, direct; and commanding all sheriffs, constables, coroners and other officers, to whom the same may be shown, to aid and assist in the execution thereof.

SEC. 3387. Every such warrant may be executed in any part of the state, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested, as sheriffs and other officers by law have in the execution of civil and criminal process directed to them, with like penalties on those who refuse their assistance.

SEC. 3388. The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass in conveying such prisoner to the place commanded in the warrant, and the keeper of such jail shall receive and safely keep such prisoner until the person having him in charge shall be ready to proceed on his route (b).

SEC. 3389. The expenses which may accrue under the foregoing provisions of this chapter, being first ascertained by the executive, shall, on his certificate, be allowed and paid out of the state treasury.

ARREST OF FUGITIVES FROM JUSTICE BEFORE REQUISITION.

SEC. 3390. Whenever any person within this state shall be charged, on the oath or affirmation of any creditable person, before any judge or justice of the peace of this state, with the commission of any crime in any other state or territory of the United States, and that such person hath fled from justice, such judge or justice shall issue his warrant for the apprehension of such person.

SEC. 3391. If, on examination, it shall appear to the judge or justice that the person charged is guilty of the crime as alleged, he shall commit him to the jail of the county, or, if the offense is bailable, take bail for his appearance at the next term of the circuit court in the county.

SEC. 3392. The judge or justice shall proceed in the examination of such person in the same manner as is required when a person is brought before such officer charged with an offense against the laws of this state, and shall reduce the examination to writing, and make return thereof, as in other cases; and shall also send a copy of the examination and proceedings to the executive of this state without delay.

SEC. 3393. If, in the opinion of the executive, the examination contains sufficient evidence to warrant the finding of an indictment, he shall forthwith notify the executive of the state or territory in which such crime is alleged to

person or persons shall by force set at liberty, or rescue the fugitive from such agent, while transporting as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year." *Act Feb. 12, 1793, 1 U. S. Stat., 302.*

(b) No person so in custody can be discharged on writ of *habeas corpus*. SEC. 3568, fourth subdivision.

have been committed of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of the indictment to accompany the demand.

SEC. 3394. When a demand shall be made for the offender, the executive shall forthwith issue his warrant, under the seal of the state, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the state.

SEC. 3395. If the accused shall be at large, on bail or otherwise, the sheriff shall forthwith arrest him, anywhere within the state, and surrender him agreeably to the command of the warrant.

SEC. 3396. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the circuit court may discharge the recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offense is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

SEC. 3397. In no case shall the accused be kept in prison or held to bail beyond the end of the second term of the circuit court after the arrest, if no demand shall be made for him within that time, but he shall be discharged.

SEC. 3398. If any recognizance entered into under the provisions of this chapter shall be forfeited, it shall inure to the benefit of the county. *Rev. Stat., chap. 67.*

FUGITIVES FROM THE JUSTICE OF THIS STATE.

SEC. 3399. Whenever the governor of this state shall demand any fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive and convey such fugitive to the sheriff of the county in which the offense was committed or is by law cognizable.

SEC. 3400. The expenses which may accrue under the provisions of the preceding section, being ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the treasury as other demands against the state. *Rev. Stat., chap. 45, secs. 240, 241.*

Reward for Apprehension of.

SEC. 3401. If any person charged with, or convicted of, treason, murder, rape, robbery, burglary, arson, larceny, perjury, counterfeiting, or any other felony within this state, shall break prison, escape or flee from justice, or abscond or secrete himself, in such cases it shall be lawful for the governor, if he shall deem it necessary, to offer a reward not to exceed the sum of one thousand dollars for the apprehending and delivering of such person into the custody of such officer as he may direct. *Rev. Stat., chap. 67, sec. 27, as amended by act Nov. 21, 1874.*

SEC. 3402. Any person apprehending and delivering such person to the proper officer, and producing to the governor the receipt of such officer for the body of such person, shall be entitled to the reward offered by the governor,

and the governor shall certify the amount of such reward to the auditor, who shall issue his warrant on the treasury therefor, to be paid out of any money appropriated for the contingent expenses of the executive department. *Rev. Stat., chap. 67, sec. 28.*

CHAPTER LXX.

GAMING CONTRACTS.

SECTION

RECOVERY OF MONEY BET.

3403, 3404. Money or property lost—how and by whom recovered.

3405. Not to extend to money lost on turf race.

JUDGMENTS, CONVEYANCES, ETC., VOID.

3406. What judgments, etc., void, where consideration is money won.

SECTION

3407. Assignment, not to affect defense.

3408. Plaintiff may call on defendant to answer, how.

3409. Such answer not evidence in proceedings by indictment.

RECOVERY OF MONEY BET.

SECTION 3403. Any person who shall lose any money or property at any game or gambling device, or any bet or wager whatever, may recover the same by action against the person winning the same; but such suit shall be instituted within ninety days after the paying over of the money or property so lost.

SEC. 3404. The heirs, executors, administrators or creditors of the person losing any money or property at any game or gambling device, or on any bet or wager whatever, may have the same remedy as is provided in the preceding section for the person losing.

SEC. 3405. Nothing in the two preceding sections shall be so construed as to enable any person to recover back any money or property lost on any turf race (a).

JUDGMENTS, CONVEYANCES, ETC., VOID.

SEC. 3406. All judgments, conveyances, bonds, bills, notes, securities and contracts, where the consideration, or any part thereof, is money or property won at any game or gambling device, or any bet or wager whatever, or for money or property lent to be bet at any gaming or gambling device, or at any sport or pastime whatever, shall be void (b).

SEC. 3407. The assignment of any bond, bill, note, judgment, conveyance, contract or other security shall not affect the defense of the person executing the same.

SEC. 3408. In all suits under this chapter, the plaintiff may call on the

(a) An action will not lie to recover property lost on a bet or wager against a third person, to whom the winner has sold it. In an action to recover property lost on a horse-race, it is incumbent upon the plaintiff to prove that the race was not a turf race. *Nelson v. Waters*, 18—570.

(b) One who pleads this act in defense against a note and mortgage fair on their face must prove the defense by clear and strong proof. *Johnson v. Godden*, 33—600.

defendant to answer, on oath, any interrogatory touching the case, and, if the defendant refuse to answer, the same shall be taken as confessed.

SEC. 3409. Such answer shall not be admitted as evidence against such person in any proceedings by indictment. *Rev. Stat., chap. 68.*

CHAPTER LXXI.

GARNISHMENT (a).

SECTION

3410. Judgment plaintiff may sue out writ of garnishment against any person indebted to or having money or property in his hands belonging to defendant.
3411. Direction, service and return of writ.
3412. Plaintiff to file interrogatories, when.
3413. Garnishee to answer interrogatories, when.
3414. Plaintiff may deny answer; issue; trial.
3415. Judgment, when issue found for garnishee; when found for plaintiff.
3416. when garnishee makes surrender.

SECTION

3417. Judgment against garnishee releases him from liability to defendant.
3418. When garnishee refuses to answer, judgment to be rendered against him.
3419. Writs of garnishment may issue from the circuit court to any county in the state.
3420. may issue on justices' judgments, when.
3421. When a judgment before a justice in one county may be filed with a justice of another county, and writ of garnishment issued thereon.
3422. Wages, exemption of.

SECTION 3410. In all cases where any plaintiff may have obtained a judgment in any court of record, or before any justice of the peace, and such plaintiff shall have reason to believe that any other person is indebted to the defendant, or has in his hands or possession goods and chattels, moneys, credits and effects belonging to such defendant, such plaintiff may sue out a writ of garnishment, setting forth such judgment, and commanding the officer charged with the execution thereof to summon the person therein named as garnishee to appear at the return day of such writ, and answer what goods, chattels, moneys, credits and effects he may have in his hands or possession belonging to such defendant to satisfy said judgment, and answer such further interrogatories as may be exhibited against him (b).

SEC. 3411. Such writ shall be directed, served and returned in the same manner as writs of summons (c).

(a) After execution is returned not satisfied, the plaintiff in the execution may institute an action by equitable proceedings for the discovery of property and credits of the defendant. SECS. 3084-3088.

See SEC. 317, note (h).

(b) Executors and administrators are not, as such, liable to garnishment. *Thorn & Robins v. Woodruff*, 5-55. Nor is a judgment debtor. *Trowbridge v. Means*, *Ib.*, 135; *Fowler v. McClelland*, *Ib.*, 188; *Tunstall v. Means*, *Ib.*, 70. See *Campbell & Cureton v. Sneed*, 9-118.

A debt due from a sole plaintiff to one of several defendants may be pleaded as a set-off by the defendant to whom such debt is due. *Leach v. Lambeth*, 14-668.

Where property is placed in the hands of a person as a pledge for a debt, it can not be taken by garnishment until the debt is paid. *Patterson v. Harland*, 12-158.

(c) It is error to join several garnishees in the same writ of garnishment, without allegations of joint liability or indebtedness. *Cincinnati & Little Rock Slate Co. v. Bridge & Co.*, 17-364.

The debt is bound in the hands of the garnishee from the time of the service of the writ, and the right of the garnishor to a satisfaction of his judgment out of the debt can not be defeated by a subsequent payment of the garnishee, whether made voluntarily or by legal coercion. *Desha v. Baker*, 3-509, and *Watkins v. Field*, 6-391; *Martin v. Foreman*, 18-249.

A writ of garnishment may be against several, where the writ, allegations and interrogatories show a joint indebtedness and a joint possession of goods, etc. *Moreland v. Pelham*, 7-338.

See note (q) to SEC. 341. The lien of a garnishment dates from the time the garnishment writ is served upon

SEC. 3412. The plaintiff shall, on or before the return day of such writ, prepare and file all the allegations and interrogatories, in writing, with the clerk or justice issuing such writ, upon which he may be desirous of obtaining the answer of such garnishee touching the goods and chattels, moneys, credits and effects of the said defendant, and the value thereof, in his hands and possession, at the time of the service of such writ, or at any time thereafter (d).

SEC. 3413. Such garnishee shall, on or before the third day after the return day named in such writ, exhibit and file, under his oath, full, direct and true answers to all such allegations and interrogatories as may have been exhibited against him by the plaintiff.

SEC. 3414. If the garnishee shall file his answer to the interrogatories exhibited, and the plaintiff shall deem such answer untrue or insufficient, he may deny such answer, and cause his denial to be entered on the record; and the court or justice, if neither party require a jury, shall proceed to try the facts put in issue by the answer of the garnishee and the denial of the plaintiff.

SEC. 3415. If the issue be found for the garnishee, he shall be discharged without further proceedings; but if the issue be found for the plaintiff, judgment shall be entered for the amount found due from the garnishee to the defendant in the original judgment, or so much thereof as will be sufficient to satisfy the plaintiff's judgment, with costs (e).

SEC. 3416. If, on the return day of any such writ of garnishment, the garnishee shall surrender to the plaintiff all the goods and chattels, moneys, credits and effects which may be in his hands or possession belonging to the defendant, he shall be discharged with costs; and the court or justice shall enter up an order releasing and discharging such garnishee from all responsibility to the defendant, in relation to the goods and chattels, moneys, credits and effects so surrendered.

SEC. 3417. In all cases where judgment shall be rendered against any garnishee on an answer to interrogatories filed, such judgment shall have the effect to release the garnishee from all responsibility in relation to the goods and chattels, moneys, credits and effects for which such judgment may have been rendered.

SEC. 3418. If any garnishee, after having been served with a writ of garnishment ten days before the return day thereof, shall neglect or refuse to answer the interrogatories exhibited against him, on or before the third day after the return day of such writ, the court or justice before whom such matter is pending shall enter judgment against such garnishee for the full amount

the garnishee, and a sale and transfer by the defendant of his choses in action, not subject to execution, before such service, will be good. The burden of proof that a purchase of debts made on the same day of the service of a garnishment was before the service is upon the purchaser. *Bergman v. Sells & Co.*, 39—97. See *Adams v. Penzell*, 40—531.

(d) The allegations and interrogatories may be filed with the clerk, at any time before the expiration of the return day of the writ, and it is not necessary that they be filed in open court, or that the filing appear of record. *Moreland v. Pelham*, 7—338. See also *Lawrence v. Sturdivant*, 10—130; *Richardson v. White*, 19—241.

In garnishments, the allegations and interrogatories should conform to the writ. If that be against a single individual, allegations addressed to him and another, alleging a joint indebtedness to the defendant, and interrogatories pursuant to them are demurrable. *Frizzell v. Willard*, 37—478.

When the effects of a defendant are in the hands of several, who are jointly liable to him for them, and which are not under the exclusive control of either of them, all must be joined as garnishees before interrogatories can be filed against either. *Ib.*

(e) An appeal lies to the circuit court from the judgment of a justice of the peace in a garnishment proceeding. *Smith v. Parker*, 25—518.

specified in the plaintiff's judgment against the original defendant, together with costs (f). *Rev. Stat., chap. 69.*

SEC. 3419. Writs of garnishment may be issued from the circuit court of one county to any other county in the state.

SEC. 3420. When a judgment before a justice of the peace in any county, together with the interest accrued on the same and the costs, amounts to more than one hundred dollars, and the plaintiff, or any other person having the right to collect the said judgment, may desire to have the benefit of garnishment thereon, it shall be lawful for such person to file in the office of the clerk of the circuit court a transcript of such judgment, certified by such justice of the peace, and the clerk shall enter the same on the judgment docket in his office, and, at the request of such person so filing the same, shall issue to any county in the state a writ or writs of garnishment thereon.

SEC. 3421. In case judgment be recovered in one county before a justice of the peace, and any person having the right to collect the same may desire to garnishee a debtor of the defendant in said judgment residing in another county, it shall be lawful for such person to file in the office of a justice of the peace in the township in which such debtor resides, in such other county, a certified transcript of said judgment; and, when the same is so filed, such justice shall enter it upon his docket, and the same shall have the force and effect of a judgment, upon which he shall issue a writ of garnishment or execution as is now provided by law in other cases. *Act Feb. 27, 1867.*

TIME WAGES—EXEMPTION OF.

SEC. 3422. The time wages of all laborers and mechanics, not exceeding their wages for sixty days, shall hereafter be exempt from seizure by garnishment, or other legal process. *Provided*, that the defendant in any case shall file with the court from which such process shall issue a sworn statement that said sixty days' wages, claimed to be exempt, is less than the amount exempt to him under the constitution of the state, and that he does not own sufficient other personal property, which, together with the said sixty days' wages, would exceed in amount the limits of said constitutional exemption. *Act Nov. 27, 1875.*

(f) The default of the garnishee admits his liability to the full extent of plaintiff's demand, and no proof is necessary to charge him. *Wilson v. Phillips*, 5—183.

A garnishee answering and admitting his indebtedness, as the maker of negotiable paper, without reserve or qualification, does so at his peril. If notified at any time before final judgment that his note had been assigned before the service of the writ upon him, he is bound to apply for leave to interpose the defense. *Cross v. Haldeman*, 15—200.

CHAPTER LXXII.

GENERAL ASSEMBLY (a).

SECTION

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3457. Resignations, to whom addressed; governor to issue writ of election.

3458. Governor to issue writs of election to fill all vacancies.

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TIME OF MEETING.

SECTION 3423. The general assembly shall meet at the seat of government every two years, on the second Monday in January, at 12 o'clock m., and continue in session for the time prescribed by law (*). *Art. V, sec. 5, Const., and act November 30, 1875.*

(a) See *art. V, Const.*

(*) For duration of session, see *art. V, sec. 17, Const.*

QUORUM—POWERS OF EACH HOUSE.

SEC. 3424. Each house shall appoint its own officers (†) and shall be sole judge of the qualifications, returns and elections of its own members. A majority of all the members elected to each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house shall provide.

SEC. 3425. Each house shall have the power to determine the rules of its proceedings, and punish its members, or other persons, for contempt or disorderly behavior in its presence; enforce obedience to its process; to protect its members against violence or offers of bribes or private solicitations, and, with the concurrence of two-thirds, expel a member; but not a second time for the same cause. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense. Each house shall keep a journal of its proceedings (*), and from time to time publish the same, except such parts as require secrecy; and the yeas and nays on any question shall, at the desire of any five members, be entered on the journals. *Art. V, secs. 11 and 12.*

SEC. 3426. If any person, whether a member or not, shall be guilty of any disorder in the presence of either house, or a committee of the whole, or in a joint meeting of both houses, while in session, the presiding officer of such house or joint meeting, or chairman of the committee of the whole, may order such person into immediate custody, and the sergeant-at-arms shall immediately take such person into custody, and detain him until the further order of the house, joint meeting or committee of the whole before which the offense was committed.

SEC. 3427. If any person, whether a member or not, shall disturb the proceedings of any committee of either house, or be guilty of disorderly conduct in their presence, the house appointing such committee may punish such person in the same manner as if the offense had been committed in the presence of such house; and, if such disorder or offense be committed before a joint committee of both houses, the president of the senate shall issue process, and both houses shall, in joint meeting, proceed therein. *Rev. Stat., chap. 90, secs. 4 and 5.*

AUTHENTICATION OF LAWS PASSED AFTER VETO.

SEC. 3428. When a bill that has passed both houses of the general assembly shall be returned by the governor without his signature, and with his objections thereto, and, upon reconsideration; shall pass both houses by the constitutional majority (b), it shall be authenticated, as having become a law, by a certificate indorsed thereon or attached thereto, in the following form:

“This bill having been returned by the governor, with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, it has become a law this ——— day of ———.”

(†) See *art. V, sec. 18, Const.*

(*) See *art. V, sec. 12, Const., note (t); Smithee v. Campbell, 41—471.*

(b) See *art. VI, sec. 15, Const.*

Which, being signed by the president of the senate and speaker of the house of representatives, shall be deemed a sufficient authentication thereof; and the bill shall again be presented to the governor, to be by him deposited with the laws in the office of the secretary of state. *Ib.*, chap. 89, sec. 1.

REMAINING WITH GOVERNOR FIVE DAYS, ETC.

SEC. 3429. If any bill shall not be returned by the governor within five days, Sunday excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall become a law, unless he shall file the same, with his objections, in the office of the secretary of state, and give notice thereof, by public proclamation, within twenty days after such adjournment. *Art. VI, sec. 15, Const.*

SEC. 3430. Every bill which shall have passed both houses of the general assembly, and shall not be returned by the governor within five days, having thereby become a law, shall be authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form:

"This bill having remained with the governor five days, Sunday excepted, and the general assembly being in session, it has become a law this —— day of ——.

D. B. G., *Secretary of State.*

Rev. Stat., chap. 89, sec. 2.

LOCAL AND SPECIAL BILLS (c).

SEC. 3431. It shall be unlawful for any local or special bill to be passed by the general assembly unless thirty days' previous notice of the intention to apply therefor shall have been published as hereinafter provided.

SEC. 3432. Such notice shall be published by hand-bills (printed or written) conspicuously posted in at least five of the most public places in the locality where the matter or thing to be affected shall be situated, or by publication in some newspaper of general circulation in said locality.

SEC. 3433. If notice be given by hand-bills, the affidavit of the person posting them, or some other creditable person resident of the locality, or, if published in a newspaper, the affidavit of the publisher thereof, showing the date of such publication, shall be exhibited in the general assembly. *Act Dec. 4, 1874.*

JOINT SESSION.

SEC. 3434. When by the constitution or laws a joint meeting of the senate and house of representatives is required, they shall assemble, with their clerks, on the day and at the hour previously agreed on for that purpose, in the hall of the house of representatives.

SEC. 3435. When assembled, the president of the senate and speaker of the house shall preside in conjunction, and such meeting shall be governed by such standing rules as shall have been adopted for that purpose by the concur-

(c) See art. V, secs. 25 and 26, *Const.*; *Boyd v. Bryant*, 35—69; *Little Rock v. Parish*, 36—166.

rence of both houses. They shall have power to punish any person, other than a member, for disorderly or contemptuous behavior in their presence, by fine and imprisonment, in the same manner and to the same extent as either house may do, for like conduct before it, by the constitution and laws of this state.

SEC. 3436. Any member of either house, who shall be guilty of disorderly behavior in the presence of such meeting, may be punished by the house of which he is a member, in the same manner as if the offense had been committed in the presence of such house.

MAY TAKE DEPOSITIONS AND COMPEL ATTENDANCE OF WITNESSES.

SEC. 3437. In cases not otherwise provided for by law, depositions may be taken and read in either house, or before a committee thereof, or both houses in joint meeting, in all cases where the taking and reading depositions would be allowed in any cause pending before a court of law.

SEC. 3438. When necessary, the presiding officer of the house in which they may be required, or of a joint meeting, may issue commissions to take such depositions; and the proceedings in taking and returning depositions shall be the same as may be prescribed by law for taking depositions to be read in a court of law.

SEC. 3439. Each house, or both houses in joint meeting, may cause to be issued the necessary writs and process to summon and compel any person charged with any offense, of which they may have jurisdiction, to appear before them, or any committee thereof, and carry into execution their orders and sentences, and to summon and compel the attendance of witnesses, in as full a manner as any court of law, and with like effect.

SEC. 3440. Subpœnas for witnesses shall be issued at the request of any member of either house, or the party accused, or any member of any committee.

SEC. 3441. All process awarded by the house of representatives, and subpœnas and other process for witnesses, where attendance may be required therein, or before any committee thereof, shall be under the hand of the speaker, and attested by the chief clerk, and shall be executed by the sergeant-at-arms or a special messenger; and all such process awarded by the senate, or a joint meeting of both houses, shall be under the hand of the president, and attested by the secretary, and executed by the sergeant-at-arms or a special messenger.

SEC. 3442. Every witness attending either house, or a committee thereof, or a joint meeting of both houses, being summoned, shall be allowed the same fees as, for the time being, shall be allowed by law to witnesses for their attendance in any court, to be paid as other costs.

SEC. 3443. The fees of all officers and witnesses before either house, or a joint meeting, and all other costs and expenses arising therein, shall be paid out of the contingent fund of the house in which the proceedings may be had, or if had in a joint meeting of both houses, then out of the contingent fund of the general assembly, unless the party charged be adjudged to pay the costs and expenses, in which case he shall pay them, and payment may be enforced by attachment. *Rev. Stat., chap. 90, secs. 1-3 and 6-12.*

POWERS OF COMMITTEES.

SEC. 3444. The chairman or member at any time acting as chairman of any committee of either house of the general assembly, or joint committee of the two houses of the general assembly, such committee being empowered to send for persons, papers and records, or for persons or papers, or records, shall be fully empowered to administer oaths and to take depositions for the purpose for which such committee or joint committee may have been empowered to send for persons or for papers or for records; and any person to whom such oath shall have been administered, or by whom such deposition shall be made, falsely testifying under such oath, or in such deposition, shall be deemed guilty of perjury, and shall be subject to the pains and penalties thereof as now prescribed or as may hereafter be prescribed by law.

SEC. 3445. The committee so empowered may issue its summons, signed by its chairman or acting chairman, for the attendance of witnesses and the production of papers or records, and such summons may be served by any officer authorized to serve process in civil cases.

SEC. 3446. If in the discretion of the committee it be desirable to take the testimony of any witness without having such witness present, the same may be done by reducing to writing the interrogatories to be proposed to the witness, and forwarding them to any officer in this state authorized to administer oaths, and he is hereby clothed with power and authorized to compel the attendance of such witness before him at a place to be by him designated by summons and attachment, and take his answers to said interrogatories, requiring him to subscribe and swear to the truthfulness of the same, which said affidavit shall be certified to by such officer. *Provided*, that the usual fees allowed officers for taking depositions and witnesses for their attendance shall be allowed for the services authorized by this section, to be paid as other current expenses of the general assembly. *Provided, further*, that the fees shall not be demanded in advance. *Act Jan. 23, 1875.*

ELECTIONS BY EITHER HOUSE OR JOINT CONVENTION (d).

SEC. 3447. In all elections made by either house, or by a joint vote of both houses, the votes of a majority of all the members present shall be necessary to a choice; and when such election shall be by joint vote, the president of the senate and the speaker of the house of representatives shall grant the person so elected a certificate thereof, which, in all cases where a commission is required, shall be sufficient to authorize the granting of such commission.

ADMINISTRATION OF OATHS.

SEC. 3448. The president of the senate and speaker of the house of representatives shall have power to administer all oaths to the members and officers of their respective houses; and the president of the senate, speaker of the house of representatives, or chairman of the committee of the whole, or the chairman of any standing or select committee, may administer oaths to witnesses in any case under their examination. *Rev. Stat., chap. 90.*

(d) Sec. art. V, sec. 14, *Const.*

MANUSCRIPT OF DAILY PROCEEDINGS.

SEC. 3449. Whenever the daily proceedings of either house of the general assembly shall be made up in manuscript form, the same shall be signed each day by the presiding officers of the respective houses, attested by the secretary or clerk thereof, and, in addition to the transcribed record of the journals of either house, the manuscript proceedings shall also be filed in the office of the secretary of state, which manuscript proceedings shall be kept and preserved by the secretary of state, and when the journals are ordered printed, the manuscript journals shall be filed with the public printer, and no other copying shall be required or compensation allowed the secretary of state or other officer for said manuscript journal, except what may be paid by the general assembly in the preparation of the same. *Act Dec. 14, 1875.*

COMPENSATION OF MEMBERS, AND OFFICERS OF.

SEC. 3450. Until otherwise provided by law, members of the general assembly shall receive for their services the sum of six dollars per day, and twenty cents per mile for each mile traveled in going to and returning from the seat of government over the most direct and practicable route. *Sched. Const., sec. 28.*

SEC. 3451. The president of the senate shall receive the sum of ten dollars per day while presiding over the senate, and the speaker of the house shall receive the sum of ten dollars per day while presiding over the house of representatives. The secretary of the senate, and the assistant secretary thereof, the clerk of the house, and the assistant clerk thereof, shall each receive the sum of eight dollars per day. The engrossing clerk of the senate and the engrossing clerk of the house shall each receive the sum of eight dollars per day. The enrolling clerk of the senate and the enrolling clerk of the house shall each receive the sum of eight dollars per day. The chaplain of the senate and the chaplain of the house shall each receive the sum of six dollars per day. The sergeant-at-arms of the senate, and the assistant sergeant-at-arms thereof, the sergeant-at-arms of the house, and the assistant sergeant-at-arms thereof, shall each receive the sum of six dollars per day. The door-keeper of the senate, and the assistant door-keeper thereof, the door-keeper of the house, and the assistant door-keeper thereof, shall each receive the sum of six dollars per day. The postmaster of the senate and the postmaster of the house shall each receive the sum of six dollars per day. The pages of the senate and the pages of the house shall each receive the sum of three dollars per day. *Acts July 7, 1868, and Dec. 19, 1868.*

SEC. 3452. The secretary of the senate and the clerk of the house of representatives shall be paid ten cents for each one hundred words, for copying the journal of the senate and house of representatives, respectively. *Act July 7, 1868.*

SEC. 3453. The compensation which shall be due the members and officers of the general assembly shall be certified by their president and speaker, respectively, to the auditor, who shall issue his warrant therefor on the treasurer, and which shall be paid out of any moneys in the treasury not otherwise appropriated. *Act Oct. 3, 1836.*

CONTINGENT EXPENSES—HOW AUDITED AND PAID.

SEC. 3454. Each house shall control its own contingent expenses; and when any account properly chargeable to the house of representatives shall be adjusted and allowed according to the rules of that house, a certificate thereof shall be granted, signed by the speaker, and attested by the chief clerk; and when any account or demand for contingent expenses of the senate shall be allowed according to the rules of that house, a certificate thereof shall be granted, signed by the president and attested by the secretary.

SEC. 3455. All joint and contingent expenses shall be controlled by the concurrent vote of both houses, and shall be ascertained and adjusted according to their joint rules, and a certificate thereof shall be signed by the president and countersigned by the secretary of the senate.

SEC. 3456. Every certificate issued in accordance with the provisions of the two preceding sections shall specify the amount due, on what account, and the fund out of which it is to be paid; and the auditor of state, on the delivery of any such certificate to him, shall draw his warrant therefor accordingly, as in case of other demands against the state. *Rev. Stat., chap. 90.*

FILLING VACANCIES IN.

SEC. 3457. When any member elected to either house of the general assembly shall resign in the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any such member shall resign during any session, he shall address his resignation to the presiding officer of the house of which he is a member, which resignation shall be entered upon the journals; in which case, and in all cases of vacancies happening or being declared during any session of the general assembly, by death, expulsion or otherwise, the presiding officer of the house in which such vacancy shall happen shall immediately notify the governor thereof, who shall immediately issue a writ of election to fill such vacancy.

SEC. 3458. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess thereof, he shall, without delay, issue a writ of election to supply such vacancy (c).

SEC. 3459. When any vacancy shall happen in the senate for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when such vacancy shall happen in a senatorial district which shall have been divided or altered after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house for any county which shall have been divided after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

SEC. 3460. The sheriff to whom any writ of election shall be delivered shall cause the election to supply such vacancy to be held within the limits

(c) See art. V, sec. 6, *Const.*

composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county may lie, who shall cause copies of such notice to be put up, and the election to be held accordingly, in such parts of their respective counties as composed a part of the old county or district for which the election was held at the last preceding general election; and the returns shall be made, and the certificate of election granted, in the same manner as if no division had taken place (f). *Rev. Stat., chap. 70.*

CHAPTER LXXIII.

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POWER TO APPOINT, CONTROL AND REMOVE GUARDIANS.

SECTION 3461. The court of probate shall have power to appoint guardians for minors, and possess the control and superintendence of them (*). *Rev. Stat., chap. 72, sec. 1.*

SEC. 3462. The clerk of the court of probate, either in person or by deputy, shall in vacation have power to grant letters of guardianship, subject to the confirmation or rejection of the court. *Act Dec. 7, 1850, and sec. 6, act April 16, 1873.*

SEC. 3463. Said court shall have power to remove guardians for good cause shown. *Rev. Stat., chap. 72, sec. 3.*

MINORS—NATURAL AND LEGAL GUARDIANS—APPOINTMENT, QUALIFICATION AND DUTIES OF.

SEC. 3464. Males of the age of twenty-one years, and females of the age of eighteen years, shall be considered of full age for all purposes, and, until those ages are attained, they shall be considered minors.

SEC. 3465. In all cases not otherwise provided for by law, the father while living, and, after his death, or when there shall be no lawful father, then the mother, if living, shall be the natural guardian of their children, and have the custody and care of their persons, education and estates; and, when such estate is not derived from the person acting as guardian, such parent shall give security and account as other guardians.

SEC. 3466. If any minor have no parents living, or the parents be adjudged incompetent or unfit for the duties of guardian, the respective courts of probate in their respective counties shall appoint guardians to such minors under the

(*) See *Sadler v. Rose*, 18—600.

age of fourteen years, and admit those over that age to choose guardians for themselves, subject to the approval of the court. *Act April 22, 1873, secs. 1-3.*

SEC. 3467. All applications for the appointment of guardians shall be by petition. If the minor be over the age of fourteen years, it shall be so stated in the petition, and it shall be signed by the applicant; and if the minor be under the age of fourteen years, it shall be so stated in the petition, and the same shall be signed by the next of kin of the minor, or by some person interested in his behalf. *Rev. Stat., chap. 72, sec. 9.*

SEC. 3468. The court may appoint guardians or curators of minors who are deaf and dumb, and who are over the age of fourteen years, and have no parent living.

SEC. 3469. The court may also appoint a guardian or curator of the person or estate of any minor whose father may be imprisoned in the penitentiary of this state; and such guardian or curator shall have the same power and control over the person or estate of such minor as if such father was dead.

SEC. 3470. The mother of such minor shall not, by such appointment, be deprived of her rights under this chapter, and the authority of such guardian or curator to act as such shall not continue after the discharge of the father from his imprisonment, unless he consent thereto.

SEC. 3471. The lawful surviving parent of any minor may, by last will, appoint a guardian of the person of such minor, who shall give bond and security, and be in all things upon the same footing as guardians appointed by the court or chosen by the minors.

SEC. 3472. Such minor shall not be allowed to choose another guardian upon arriving at the age of fourteen years, unless the testamentary guardian decline to serve longer and notify the court thereof.

SEC. 3473. If any testamentary guardian shall fail to notify the proper court of his acceptance of the guardianship, and give bond and security within six months after the probate of the will, the court may appoint a guardian in his stead.

SEC. 3474. Whenever any justice of the peace, sheriff or constable shall have knowledge that there is, within his county, any minor without any legal or natural guardian, he shall communicate the fact, with the name and usual residence of the minor, by a report in writing to the probate court, and the court shall thereupon proceed to appoint a guardian.

SEC. 3475. Whenever it shall appear to such court that a minor over the age of fourteen has no guardian, the court shall issue notice to such minor to appear before it at a stated time to choose a guardian, or that one will be appointed; and, if such minor on due notice shall neglect or refuse to appear, or to choose a guardian after appearing, the court shall appoint one as if such minor were under the age of fourteen years.

SEC. 3476. If such minor appear and make choice of a guardian, and the court is satisfied that the person chosen is suitable and competent, such appointment shall be made accordingly; but, if the choice shall not be approved by the court, it shall appoint some competent and suitable person to be guardian, in the same manner as if the minor was under the age of fourteen years.

SEC. 3477. When a minor shall be entitled to or possessed of any estate not derived from the parent who shall be the natural guardian at the time, and

it shall be suggested to the court that such parent is incompetent to the care of such estate, or is mismanaging or wasting the same, the court may issue a notice to such person to appear before it at a stated time, and show cause why a curator shall not be appointed or chosen; and, if on due notice no sufficient cause be shown, the court shall appoint a curator for the management of such estate for the minor, if under fourteen years of age, or, if over that age, admit the minor to choose one in the same manner and subject to the same restrictions as provided for the choice or appointment of guardians for minors over that age.

SEC. 3478. Whenever the court shall be satisfied that it will be for the advantage of minors to appoint a curator of the estate different from the guardian of the person, it shall be lawful to make such separate appointment for minors under fourteen years of age, and for minors over that age to make such separate choice, subject to the approval of the court; and all guardians or curators shall be allowed to prosecute and defend for the minors in all matters committed to the care of such guardians and curators respectively, without further evidence in the several courts of the state.

SEC. 3479. If any minor residing without this state shall have any estate within this state, the court of probate in the county where the estate, or any part thereof may be, shall appoint some competent person to be curator of the estate of such minor; and the curatorship which shall be first lawfully granted of the estate of any such minor shall extend to all the estate of such minor within this state, and shall exclude the jurisdiction of every other court.

SEC. 3480. A minor having a guardian or curator appointed by the court, upon attaining the age of fourteen years, may choose another guardian or curator before the proper court in the county of the minor's residence; and, if the court is satisfied that the person chosen is suitable and competent, the appointment shall be made accordingly.

SEC. 3481. If the guardian or curator so chosen or appointed reside in a county different from that in which the former appointment was made, the court of probate may, on being satisfied that it will not be injurious to the interest of the minor, order a removal of the proceedings to the county in which the guardian or curator so chosen shall reside.

SEC. 3482. On presenting a copy of such order to the court in which the proceedings of the former guardianship or curatorship shall be, the court shall order a transcript of all the proceedings and all the moneys, property, evidences of right and titles, of which the latter guardian or curator is entitled to the possession, to be delivered to him, and the receipt of such latter guardian or curator shall be a sufficient voucher for so much to the former one in the settlement of his accounts.

SEC. 3483. The court to which such removal shall be made shall take jurisdiction of the case, place the said transcript of record, and proceed to the final settlement of the case as if the appointment or choice had been made before it.

SEC. 3484. Every appointment of a guardian shall specify whether it be of the person of his ward or his person and estate.

SEC. 3485. The guardian of the person, whether natural or legal, shall be entitled to the charge, custody and control of the person of his ward, and the care of his education, support and maintenance. The curator shall have the

care and management of the estate of the minor, subject to the superintending control of the court; and the guardian of the person and estate of the minor shall have all the powers and perform all the duties both of a guardian of the person and curator.

SEC. 3486. No married woman shall be a guardian or curator of the estate of a minor; and if any woman, after the appointment, marry, the marriage shall operate as a revocation of her appointment; but a married woman may be guardian of the person of a minor, and marriage after appointment shall not operate as a revocation thereof.

SEC. 3487. No person other than a resident of this state shall be appointed a guardian or curator, and if, after his appointment, any guardian or curator remove from this state, his appointment shall be revoked and proceedings had as in other cases of revocation.

SEC. 3488. No clerk, sheriff or judge of the probate court shall be appointed a guardian or curator in the county or district where he resides; nor shall any judge, clerk of a court of record, sheriff, or deputy of either, or attorney at law, be taken as security for any guardian or curator.

SEC. 3489. Guardians and curators appointed by the court, or chosen by the minors under the sanction of the court, shall be at least twenty-one years of age, and shall respectively, before entering on the duties of their office, give bond, with security, to be approved by the court before they shall be appointed, to the State of Arkansas, for the use of the minors respectively, in double the value of the estate or interest to be committed to their care, conditioned for the faithful discharge of their duties according to law; and the court shall have power to order them to give supplemental security, or a new bond with sufficient security, upon like notice, for the same causes, in the same manner and with like effect as authorized by law in the case of administrators, and in default thereof, or for other good cause, to remove them and to appoint or admit the choice of others in their stead (a). *Act April 22, 1873, secs. 4-21.*

SEC. 3490. Such bond shall be filed in the office of the clerk of the court of probate, a copy of which shall be evidence in all cases, in the same manner as the original.

SEC. 3491. No entry of the appointment of a guardian shall be made until bond and security be given, and the same be approved. *Rev. Stat., chap. 72, secs. 11 and 12.*

(a)

FORM OF BOND.

We, _____, _____, _____, _____, acknowledge ourselves indebted to the State of Arkansas in the penal sum of _____ dollars.

The foregoing obligation is upon this condition: Whereas, the said _____ was, on the _____ day of _____, 18—, duly appointed by the circuit court of _____ county guardian (or curator) of _____, a minor under the age of twenty-one years (or, in case of a female, eighteen years): Now, if the said _____ shall faithfully discharge his duties as guardian as aforesaid, according to law, then the above obligation to be void; otherwise to be and remain in full force and effect.

Dated this _____ day of _____, 18—.

_____,
_____,
_____.

Taken and approved by the court this _____ day of _____, 18—.

_____, Clerk.

See *Turner v. Alexander*, 41—254.

Suit can not be brought on the bond until there is an order of the probate court to pay over. *Vance v. Beattie*, 35—93; *Connelly v. Weatherly*, 33—658.

SEC. 3492. If it shall at any time appear to the satisfaction of the court that the bond and security given by any guardian is insufficient, the court shall order such guardian to give such other and additional security as the circumstances of the case may require; and if such guardian shall neglect or refuse to give such other and additional security within ten days after the making of such order, notice thereof having been given to the guardian, he shall be removed from office, and his authority, as guardian, from that time shall cease (b). *Ib.*, sec. 13.

SEC. 3493. It shall be the duty of every curator of any estate, and every guardian of the person and estate of a minor, to make a true inventory of all the real estate and of all the goods and chattels, rights and credits of the ward that shall come to his possession or knowledge, and to return the same, verified by affidavit, to the court, at the first term after any such estate shall come to his possession or knowledge.

SEC. 3494. Upon taking any inventory required by the preceding section, the personal estate and effects comprised therein, except as in the next section provided, shall be appraised in like manner as is required in respect to the inventory of the personal estate of a deceased testator or intestate.

SEC. 3495. When any personal estate shall have been received from an executor or administrator, or a former guardian or curator, and shall have been appraised, it shall not be necessary for the guardian or curator to cause the same to be appraised again, but he shall state in his inventory of such estate the appraised value as it appears on the appraisal of such executor or administrator, or former guardian or curator, and be held to account accordingly.

SEC. 3496. Upon complaint made on oath to any court having jurisdiction by any guardian, curator or ward, or by any creditor or any person interested in expectancy, reversion or otherwise, against any person within the county suspected of having concealed or embezzled any of the money, goods or effects of the ward, and has them in his possession or under his control, the court may cite and examine such suspected person and proceed as to such charge in the same manner as is provided by law respecting persons suspected of concealing or embezzling the effects of a testator or intestate.

SEC. 3497. If any person file a like complaint against any guardian or curator, the probate court shall have the same power to cite him and compel his appearance, and shall proceed upon such complaint in the same manner as is provided in the preceding section. *Act April 22, 1873, secs. 22-26.*

RENTING AND LEASING LANDS.

SEC. 3498. When any minor shall be the owner of any improved lands, it shall be the duty of the guardian of such minor, annually, to rent such lands to the highest bidder, giving ten days' previous public notice of the time and place of renting the same (c). *Rev. Stat., chap. 72, sec. 14.*

SEC. 3499. The guardian shall take bond and security for the payment of the rent, and that the tenant will not commit waste on the demised premises. *Ib.*, sec. 15.

(b) See SEC. 37 and *note to SEC. 6409.*

(c) Guardian should lease ward's homestead. *Booth v. Godwin, 29-633.*

SEC. 3500. If any ward be the owner of wild or unimproved lands, not connected with any cultivated or improved tract belonging to such ward, the guardian may, under the advice and direction of the court, let out such unimproved lands, on improvement leases, not to extend more than two years beyond the majority of such ward. *Ib.*, sec. 16.

EXPENDITURES.

SEC. 3501. The probate court may direct a guardian to expend for the maintenance and education of his ward a specified sum, although such sum may exceed the income of the ward's estate; but, without such direction, the guardian shall not be allowed, in any case, for the maintenance and education of the ward, more than the clear income of the estate. *Ib.*, sec. 17.

EDUCATION OF MINORS, AND LEASE OR SALE OF REAL ESTATE FOR THAT PURPOSE.

SEC. 3502. The probate court shall order the proper education of minors according to their means, and for that purpose may, from time to time, make the necessary appropriations of the money or personal estate of any minor, and when the personal estate shall be insufficient or not applicable to the object, upon application the court may order the lease or sale of real estate, or so much thereof as may be requisite, or that the same be mortgaged for not less than two-thirds of its real value, to raise the funds necessary to complete the education of such minor.

SEC. 3503. When real estate of minors is ordered to be sold under the provisions of the last preceding section, such sale shall be advertised and conducted in the same manner as now provided by law for advertising and conducting sales of real estate of deceased persons, made by executors and administrators, for the payment of debts (d).

SEC. 3504. No real estate of any minor shall be sold for less than three-fourths of its appraised value.

SEC. 3505. No guardian or curator of any minor shall, directly or indirectly, become the purchaser of such real estate.

SEC. 3506. Whenever any guardian or curator shall sell any real estate belonging to his ward under an order of court, he shall report such sale to the court ordering the same in the same manner as executors and administrators are required by law to report sales of real estate made by them for the payment of debts; and such sale, if approved by said court, shall be valid to all intents and purposes. If the court refuse to approve the report, the order of sale shall thereupon be renewed, and the same proceedings shall be had as upon the original order.

SEC. 3507. The guardians and curators, having received payment of the purchase money for any real estate sold by them, shall execute and deliver to the purchaser thereof a deed of conveyance for the same, referring in apt and appropriate terms to the order of the court, the advertisement, the appraisal and description of the real estate, the time, place and terms of sale, and

(d) A sale by a guardian is not complete until confirmed by the court. *Guyon v. McCauley*, 32—97; *Thomason v. Craighead*, *Ib.*, 391. The rule *caveat emptor* applies to guardian's sales, but if the guardian misrepresents the title to the purchaser, the latter will not be bound. *Black v. Walton*, *Ib.*, 321.

the payment of the purchase money, which recitals shall be *prima facie* evidence of the facts so recited, and conveying to such purchaser or purchasers all the right, title and interest of the ward in the real estate so sold.

SEC. 3508. Deeds and conveyances executed by guardians and curators shall be acknowledged and recorded as other instruments conveying real estate, and with like effect, and, when so acknowledged, shall be received in evidence in all courts of this state without further proof.

LEASE OR SALE OF REAL ESTATE OF MINORS FOR INVESTMENT.

SEC. 3509. When it shall appear that it would be for the benefit of a ward that his real estate, or any part thereof, be sold or leased and the proceeds put on interest, or invested in productive stocks, or in other real estate, his guardian or curator may sell or lease the same accordingly upon obtaining an order for such sale or lease from the court of probate of the county in which such real estate or the greater part thereof shall be situate (e).

SEC. 3510. To obtain such order, the guardian or curator shall present to the court a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded.

SEC. 3511. If, after a full examination on the oath of creditable and disinterested witnesses, it appears to the court that it would be for the benefit of the ward that the real estate, or any part of it, should be sold or leased, the court may make an appropriate order for such sale or lease, under such regulations and conditions, subject to the provisions of this chapter in relation to the sale of real estate of minors, as the court shall consider suited to the case, first requiring the guardian or curator to enter into good and sufficient bonds to make such leases and conduct such sales with fidelity to the interest of his ward, and faithfully to account for the proceeds of such sales and leases according to law and as the order of the court may require. *Act April 22, 1873, secs. 27-34.*

MONEY OF WARD TO BE LOANED.

SEC. 3512. If at any time any guardian shall have on hand any money belonging to his ward, beyond what may be necessary for his education and maintenance, such guardian shall, under the direction of the court, loan the same to such person as will give good security therefor, and such money shall be loaned on such time as the court shall direct.

SEC. 3513. If any guardian fail to loan the money of his ward on hand, as aforesaid, under the provisions of this act, he shall be accountable for the interest thereon. *Rev. Stat., chap. 72, secs. 25, 26.*

SEC. 3514. Guardians and curators shall loan the money of their wards at the highest rate of interest prevailing in the community that can be obtained, on unincumbered real estate security other than the homestead, and then not more than to the extent of one-half the value thereof. The interest in all cases shall be paid annually, and if not then paid shall become part of the principal and bear interest at the same rate. *Act April 22, 1873, sec. 40, as amended by act March 17, 1879.*

(e) The probate court can order a sale to raise funds for the ward's education. *Phelps v. Buck*, 40—219.

GUARDIAN TO REPORT DISPOSITION OF MONEY.

SEC. 3515. It shall be the duty of the court of probate to require every guardian and curator to make report, at every annual settlement, of the disposition made by such guardian or curator of the money belonging to the ward intrusted to him; and if it appear that such money is loaned out, then he shall state the name of the person to whom loaned, the description of the real estate security and where situate, and its value, which report shall be sworn to by said guardian or curator and filed in the court.

SEC. 3516. It shall be the duty of said court to carefully examine into such report as soon as made, and if in its opinion the security is insufficient, it shall be the duty of the court to require additional security to be given to protect the interest of said ward, and if such additional security be not given within such time as the court shall order, not exceeding ten days, it shall be the duty of the guardian or curator to institute suit forthwith on such security to recover the amount due thereon; and he and his security shall be liable on the bond for any omission so to do; and if such money has not been loaned out, the court shall order the money to be forthwith invested in United States bonds, for the use and benefit of such ward, and which shall remain so invested until said court shall order otherwise; and a report of the action of such guardian or curator shall be made of his proceedings. *Ib.*

SEC. 3517. No guardian shall be personally responsible for any money belonging to his ward and loaned out by him, under the direction of the court, and on security which may have been approved by the court, in case of the inability of the person to whom such money may have been loaned or his security to pay the same. *Rev. Stat., chap. 72, sec. 24.*

NON-RESIDENT MINORS, HOW PROPERTY SOLD.

SEC. 3518. When a non-resident minor owning property in this state has a guardian in the state or territory in which he resides, the court of probate of the proper county may, for the purpose of educating and supporting such minor, make appropriation of the money and personal property belonging to him.

SEC. 3519. When such money or personal property shall be insufficient for these objects, the court of probate may order the lease or sale of the real estate of such minor, or so much thereof as may be necessary for the purpose aforesaid, and direct his curator to pay over to his guardian aforesaid the sum so appropriated or produced by the sale of the personal property, or by the lease or sale of the real estate.

SEC. 3520. When the real estate of such minor shall be sold for the purposes aforesaid, the court may, in its discretion, direct the proceeds of sale to be paid over to the guardian aforesaid, or order such proceeds to be by the curator loaned out, secured on real estate of at least double the value of the sum loaned, the interest accruing thereon to be paid over from time to time to the guardian.

SEC. 3521. When a non-resident minor owns real estate in this state, and has a guardian in the state or territory in which he resides, the court of probate in the proper county may authorize such guardian, either in person or by his

agent acting under power of attorney, to sell such real estate and receive the proceeds of such sale. *Provided*, that, before any order shall be made for the payment of money to a non-resident guardian, or for the sale of the property of his ward by him, he shall produce satisfactory evidence to the court that he has given bond and security as guardian, in the state in which he and his ward reside, in at least double the amount of the sum to be paid to him, or in double the amount of the appraised value of the property to be sold; and the proof shall consist of a copy of the record, setting forth his appointment as guardian, and also a copy of his bond executed as such, duly authenticated.

NON-RESIDENT MINORS, GUARDIANS, ETC.—HOW PROPERTY REMOVED.

SEC. 3522. When any guardian and his ward are both non-residents, and such ward may be entitled to property of any description in this state, such guardian, on producing satisfactory proof to the court of probate of the proper county, according to law, that he has given bond and security in the state in which he and his ward reside, in double the amount of the value of the property, as guardian, then such guardian may demand or sue for and remove any such property to the place of residence of himself and ward.

SEC. 3523. When such non-resident guardian shall produce an exemplification, under the seal of office (if seal there be) of the proper court in the state of his residence, containing all the entries on record in relation to his appointment and giving bond, duly authenticated, the court of probate of the proper county in this state may cause suitable orders to be made discharging any resident guardian, executor or administrator, and authorizing the delivery and passing over of such property, and also requiring receipts to be passed and filed if deemed advisable.

SEC. 3524. Reasonable notice shall be given to the resident guardian, executor or administrator of the intended application for the order of removal; and the court may reject the application and refuse such order whenever it is satisfied it is for the interest of the ward that such removal shall not take place.

SEC. 3525. Whenever it shall be made to appear to the court that any non-resident minor having a guardian or curator in this state has also a guardian in another state or territory, the court may authorize or compel the resident guardian or curator to deliver over to such foreign guardian all the property of such minor of which he may have the custody, and make a full and perfect settlement of his guardianship or curatorship with such foreign guardian. The receipts of such foreign guardian shall fully discharge such resident guardian or curator and his securities from all liability on account of the property so delivered to such foreign guardian. *Act April 22, 1873, secs. 35-39, 45.*

REMOVAL OF GUARDIANSHIP FROM ONE COUNTY TO ANOTHER.

SEC. 3526. Any guardian who has the custody of the person and property of any minor within this state, who has removed, or shall hereafter remove, to any county thereof other than the one in which the letters of guardianship were originally granted, may petition the probate court of the county to which such guardian has removed, or may hereafter remove, setting forth the facts and

truth of the whole matter, disclosing the full amount of property, money and indebtedness in his hands as such guardian, which petition shall be verified by affidavit; and, thereupon, the probate court of the county of which such petitioner is a resident citizen shall proceed to take such bond and security as are now provided for by law in other cases of guardianship, to be approved by the court. *Act Jan. 14, 1857, sec. 1.*

SEC. 3527. Any such guardian, as aforesaid, may procure a certified transcript of the bond, petition and other proceedings herein provided for, and file the same with the clerk of the probate court in which the guardianship was originally granted, and in which the settlement, under existing laws, would have to be made; and, if it shall appear to such court that the proceeding is regular, and that the bond is sufficient to cover the full liabilities of such guardian, such court may then order the transfer of the guardianship, and that a full and complete statement and copy of all the papers and settlements and liabilities of such guardian shall be made out and properly certified by the clerk, to be transmitted to the county where the new bond shall have been filed; and the probate court thereof, upon the filing of such proceedings, duly authenticated, shall have the same jurisdiction over the guardian and his settlements that belonged to the court from which the proceedings were removed. *Provided, however, that the securities in the first bond shall not be liable for breaches thereof that may occur after the whole proceedings have been filed in the office of the clerk of the county to which the guardianship, pursuant to this act, may be removed. Ib., sec. 2.*

ANNUAL SETTLEMENTS—FINAL SETTLEMENTS AND DISCHARGE—COMPENSATION,
ETC.

SEC. 3528. Guardians and curators shall make annual settlements of their accounts with the court of probate in which their proceedings shall be, beginning at the first term after the end of a year from their appointment or admission, respectively, and at each corresponding annual term, as nearly as may be, until the final settlement; and, in such settlement, guardians having the care of the education of minors shall make a statement, on oath, of the application of all moneys directed by the court to be applied by them to the education of their ward (f). Guardians or curators neglecting or refusing to make such settlement and statements shall be liable to be attached and imprisoned until they make such settlement and statements, the court first causing a rule to be served on them, respectively, to show cause why they should not be proceeded against.

SEC. 3529. Wards having received all money and other estate due from their guardians or curators, on the expiration of the guardianship or curatorship, shall acknowledge satisfaction of record in the proper court, and if such ward, on due notice, neglect or refuse to make such acknowledgment, or can not be found in the county to be served with notice, the court shall enter a discharge of such guardian or curator on the record, and give him a certificate thereof.

(f) The settlements of a guardian can only be attacked in chancery for fraud. *Phelps v. Buck*, 40—219. The guardian must file separate accounts with each ward. *Crow v. Reed*, 38—482. Though the guardian's power may be revoked by the death or marriage of his ward, the probate court has still authority to make him account. *Price v. Peterson*, *Ib.*, 494.

SEC. 3530. Such court shall not enter said discharge nor give such certificate until the guardian or curator shall first exhibit to the court the written statement of such ward acknowledging the receipt of all money and other property due from the said guardian or curator, which said written statement, if the ward be a married woman, shall be signed by herself and her husband, and if by a male ward, by himself, and in every case acknowledged by said parties to be their act and deed before some officer authorized by law to take acknowledgments of deeds.

SEC. 3531. Discharges, acquittances and receipts given by guardians and curators, during the continuance of their respective offices, for debts, rents or other money or property due to their wards, shall be valid in favor of all persons who take them in good faith; but guardians and curators, and their securities, shall be liable to the party injured if such discharges, acquittances and receipts shall be given illegally or fraudulently.

SEC. 3532. Every guardian or curator shall continue in office, unless discharged according to law, until the ward shall arrive at full age, or, if a female, until her marriage, if that event shall first happen; and, when any guardian or curator shall be entitled to his discharge, he shall make a just and true exhibit of the account between himself and ward, for the purpose of a final settlement of his guardianship accounts, and shall file the same with the court having jurisdiction thereof. He shall then give notice of his intention to apply to said court for leave to make a final settlement of his guardianship account, and for his discharge as such guardian; which notice shall state the time of making such application, and shall be duly published in a newspaper or by printed bills put up at six of the most public places in said county.

SEC. 3533. At the first regular term of said court after the expiration of three months from the filing of said exhibit, on satisfactory proof that the notice required has been given, the court may hear the application of said guardian or curator for his discharge, and may grant or refuse the same, as may seem just and right; but, on such hearing, it shall be the duty of said court to carefully and diligently examine the said account so exhibited for the purpose of final settlement, to correct all errors therein, if any there be; and, after such examination and correction, the said court shall proceed to make a final settlement with said guardian on the basis of said exhibited account (g). Appeal shall be allowed from the decision of such court on such final settlement as in the case of executors or administrators, and shall be taken within twelve months after the rendition of such decision. *Act April 22, 1873, secs. 41, 42, 46, 47 and 49.*

SEC. 3534. The court of probate shall have power to order any property, real or personal, that may come to the possession of a guardian as such, and shall be in his possession at the determination of his guardianship, to be delivered to the person who was his ward, his executor or administrator, and enforce the same by attachment (†).

SEC. 3535. The guardian, or his heirs, executors, administrators or assigns, shall not dispute the right of the ward to any property that shall have come to his possession as guardian, except such property as shall have been recovered from

(g) The statute of limitations does not begin to run in favor of the guardian until his discharge. *Connelly v. Weatherly*, 33—658. A ward is entitled to lands bought with his money by his guardian. *Shelton v. Lewis*, 27—190.

(†) See *Egner v. McGuire*, 7—107.

the guardian, or there be a personal action pending on account of it. *Rev. Stat., chap. 72, secs. 22 and 23.*

SEC. 3536. Guardians and curators shall receive such compensation for their services as the court shall decide to be just and reasonable.

SEC. 3537. Any guardian or curator may resign his trust or be removed from office for like causes, in like manner and with like effect, as in the case of an executor or administrator. *Act April 22, 1873, sec. 50.*

DECEASED MINORS.

SEC. 3538. Whenever a minor having a guardian or curator dies possessed of property, real or personal, no letters of administration shall be granted on such estate, except as provided in the next succeeding section; but the court of probate shall proceed to distribute the personal estate among those interested, by ordering the same to be paid over by the guardian or curator to the distributees.

SEC. 3539. Whenever a minor dies leaving demands for which his estate would be liable in an action, or whenever a minor has died leaving a will, valid under the law respecting wills, letters testamentary or of administration shall be granted on the estate of such deceased minor in the manner provided by law, as in the case of other testators or intestates. *Ib., secs. 43, 44.*

CHAPTER LXXIV.

HABEAS CORPUS.

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SECTION 3540. The privilege of the writ of *habeas corpus* shall not be suspended, except by the general assembly, in case of rebellion, insurrection or invasion, when the public safety may require it (a). *Art. II, sec. 11, Const.*

SEC. 3541. The writ of *habeas corpus* shall be issued, served and tried in the following manner:

SEC. 3542. The writ of *habeas corpus* shall be issued upon proper application by the following officers: By a judge of the supreme or circuit court or of any chancery court during the sitting of their respective courts or in vacation. The power of the supreme, circuit or chancery courts to issue writs of *habeas corpus* shall be co-extensive with the state (b). The county judge shall have power, co-extensive with his county, in the absence of the circuit judge therefrom, to issue, hear and determine writs of *habeas corpus* on proper application

(a) See *Wright v. Johnson*, 5—687.

(b) See *art. VII, sec. 4, Const.* As to when the supreme court will compel circuit judge by *mandamus* to issue the writ, see *Wright v. Johnson*, 5—687. Where there is no subordinate court competent to issue the writ, the supreme court will award it. *Robins, ex parte*, 15—402, and cases cited; *Kittrel, ex parte*, 20—499; *Good, ex parte*, 19—410.

of parties entitled thereto, in all cases and with like powers in which the circuit judge may issue and determine such writ. *Provided*, that no county judge shall have power to issue or hear any writ of *habeas corpus* in any case in which an indictment has been found by a grand jury (c). *Crim. Code, sec. 388, as amended by act March 21, 1883.*

SEC. 3543. Writs of *habeas corpus* may be granted without the seal of the officer, but shall be signed by him.

SEC. 3544. The writ of *habeas corpus* shall be granted forthwith by any of the officers before enumerated to any person who shall apply for the same by petition, showing, by affidavit or other evidence, probable cause to believe he is detained without lawful authority, or is imprisoned when, by law, he is entitled to bail (d). *Crim. Code, sec. 388, as amended 1871.*

SEC. 3545. If the restraint or confinement is by virtue of any warrant, order or process, a copy thereof must accompany the petition, or it must appear by affidavit annexed thereto that, by reason of the person being concealed before the application, a demand of such copy could not be made, or that such demand was made of the person by whom the prisoner is confined or restrained, and a copy refused (e). *Rev. Stat., chap. 73, art. 1, sec. 5.*

SEC. 3546. It shall in like manner be granted upon the application and in the name of the father, mother, guardian or next friend of any married woman or infant against any person who shall unlawfully have or detain in custody or bondage any infant or married woman; and like proceedings shall be had for hearing and determining the cause and affording the relief demanded as in other cases (f). *Crim. Code, sec. 388, as amended 1871.*

SEC. 3547. Whenever any court of record, or any judge of the supreme court, or any judge of the circuit court, shall have evidence, from any judicial proceeding had before them, that any person is illegally confined or restrained of his liberty within the jurisdiction of such court or judge, it shall be the duty of the court or judge to issue a writ of *habeas corpus* for his relief, although no application or petition be presented for such writ. *Rev. Stat., chap. 73, art. 1, sec. 7.*

SEC. 3548. The writ shall be directed to the person in whose custody the prisoner is detained, and made returnable, as soon as may be, before the supreme,

(c) See art. VII, sec. 37, *Const.*

(d) Whenever there is an illegal imprisonment, or an unlawful restraint of personal liberty, the party injured, if he be of majority, and his guardian, if he is a minor, is entitled to a writ of *habeas corpus*, if he brings himself within the rules prescribed in such cases. *Wright v. Johnson*, 5—687.

As to when the writ will be granted to admit prisoner to bail, see *Osborn, ex parte*, 24—185; *Bird & Bailey, ex parte*, *Ib.*, 275; *Cooper v. State*, 23—278; *Kittrel, ex parte*, 20—193; *Goud, ex parte*, 19—410; *Robins, ex parte*, 15—402; *White, ex parte*, 9—222.

(e) A copy of the warrant, order or process must accompany the petition, or a legal excuse be shown for the omission. For if the warrant, order or process shows a valid and legal commitment, the application should be denied. *Beard, ex parte*, 4—9; *Royster, ex parte*, 6—28.

(f) In deciding contests upon writs of *habeas corpus* for the custody of infant children, the principles adopted in the chancery court must govern. No rigid rules to govern the practice have or can be formulated. Subject to a few general rules, to be taken as a guide, the chancellor must exercise his judgment upon the peculiar circumstances of the case, and act as humanity, respect for the parental affection and regard for the infant's best interest may prompt. All three should be considered. Neither should be conclusive. *Verser v. Ford*, 37—27. As against strangers, the father, however poor and humble, if of good moral character and able to support the child in his own style of life, can not be deprived of the privilege by any one whatever, however brilliant the advantage he may offer. It is not enough to consider the interest of the child alone. And as between father and mother, or other near relation of the child, where sympathies of the tenderest nature may be confidently relied on, the father is generally to be preferred. *Ib.*

As to when the writ should be issued on petition of a guardian, for the purpose of trying the illegal restraint of his ward, see *Wright v. Johnson*, 5—687.

circuit or chancery judge of the county in which it may be served, if either be within the county. The writ shall specify the time and place to which it shall be returned. The writ may be substantially in the following form :

THE STATE OF ARKANSAS.

To ———, of the county of ——— :

You are commanded to have the body of John Doe, detained in your custody, as it is said, together with the day and cause of his being taken, before me at the court-house in ———, on the ——— day of ———, at the hour of ——— in the forenoon, and then and there state in writing the term and cause of his imprisonment, and produce your authority for so doing: And hereof you are not to fail under the heavy penalties denounced by law against those who disobey this writ, and to submit to and receive all those things which shall then and there be adjudged in this behalf.

Given under my hand this ——— day of ———, 18—.

————, Circuit Judge.

Crim. Code, sec. 388, as amended 1871.

SEC. 3549. In a writ of *habeas corpus* the person having the custody of the prisoner may be designated either by his name of office, if he have any, or his own name, or, if both names be uncertain or unknown, he may be described by any assumed appellation; and the person directed to be produced may be designated by his name, but, if his name be uncertain or unknown, he may be described in any other way so as to designate or identify the person intended.

SEC. 3550. Writs of *habeas corpus* shall not be disobeyed for any defect of form, and any one who shall be served therewith shall be deemed to be the person to whom it is directed, though it may be directed to him by a wrong name or description, or to another person. *Rev. Stat., chap. 73, art. 1, secs. 10, 11.*

SEC. 3551. The officer granting the writ may previously require bond, with surety, in sufficient penalty, payable to the state or to the person against whom the writ is directed, conditioned that the person detained shall not escape by the way, and for the payment of such costs and charges as may be awarded against him. The bond shall be filed with the other proceedings in the court, and may be sued on by the state for the benefit of any person injured by the breach of it.

SEC. 3552. The writ shall be served by any qualified officer, or by any private individual designated by the judge, on the person to whom it is directed, or, in his absence from the place where the petitioner is confined, on the person having him in immediate custody. *Crim. Code, sec. 388, as amended 1871.*

SEC. 3553. If the person upon whom the writ ought to be served conceal himself or refuse admittance to the person attempting the service thereof, it may be served by affixing a copy of the same in some conspicuous place on the outside either of the dwelling-house or jail, or place where the party is confined. *Rev. Stat., chap. 73, art. 2, sec. 2.*

SEC. 3554. The officer or other person serving the writ shall leave a copy with the person on whom it is served, and return the original to the proper officer.

SEC. 3555. The writ shall be made returnable within three days after it is served, or, if the person is to be brought more than twenty miles, within so

many days more as will be equal to one day for every twenty miles for such further distance, and shall be returned with the person of the petitioner, with the cause of his detention or his imprisonment stated in said return. *Crim. Code, sec. 388, as amended 1871.*

SEC. 3556. Every officer or other person upon whom a writ of *habeas corpus* shall be served shall state in his return plainly and unequivocally:

First. Whether he has or has not the party in his custody, or under his power or restraint.

Second. If he has the party in his custody or power, or under his restraint, he shall state the authority and true cause of such imprisonment or restraint, setting forth the same at large.

Third. If the party be restrained, imprisoned or detained by virtue of any writ, order, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be exhibited on the return of the writ to the judge to whom the same is returnable.

Fourth. If the person making the return shall have had the party in his power or custody, or under his restraint, at any time before the service of the writ, and has transferred such custody or possession to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place.

SEC. 3557. The return must be signed by the person making the same, and, except where such person shall be a sworn officer, and shall make his return in his official capacity, it shall be verified by his oath.

SEC. 3558. When the party for whose relief a writ of *habeas corpus* shall have been issued shall stand committed for any criminal or supposed criminal matter, it shall be the duty of the officer or person upon whom the writ is served to bring with the writ all and every examination and information in his hands, possession, custody or charge relating to the commitment.

SEC. 3559. If no such examination shall have accompanied the commitment, nor be in the possession of the officer having the prisoner in custody, such officer shall exhibit the *habeas corpus*, when served on him, to the magistrate by whom the prisoner was committed, or the clerk of the court, if the papers are in his office; and it shall be the duty of the magistrate or clerk to deliver to such officer having the custody of the prisoner the examinations and proofs relating to the offense charged, to be by such officer returned with the writ.

SEC. 3560. If no examination shall have been filed with the commitment or in the office of the clerk, and none be produced by the committing magistrate upon the exhibition of the writ of *habeas corpus* to him, as provided in the preceding section, such magistrate shall appear in person at the time and place to which the writ is returnable, and, if he fail to do so, may be proceeded against by attachment. *Rev. Stat., chap. 73, art. 2, secs. 7, 8, 15, 16, 17.*

SEC. 3561. If any person on whom such writ is served fail to bring the body of the petitioner, with a return of the cause of his detention, at the time and place specified in said writ, he shall forfeit and pay the prisoner one thousand dollars.

SEC. 3562. When the person who applies for a writ of *habeas corpus* shall not be in the custody of a jailer or other officer, the judge may, for good cause

shown, direct the officer or person serving the writ to take the applicant into his custody and produce him on the return of the writ.

SEC. 3563. When a person is confined in jail by a warrant of commitment or order of a court of record, the officer, upon demand of the prisoner, or any one for him, shall deliver a copy of the same; and, if he refuse, he shall forfeit and pay to the prisoner three hundred dollars.

SEC. 3564. If any officer named in section 3542 shall, when legally applied to, refuse to issue the writ of *habeas corpus* to the petitioner, he shall forfeit and pay to the petitioner five hundred dollars. *Crim Code, sec. 388, as amended 1871.*

SEC. 3565. The petitioner may deny the material facts set forth in the return, or allege any fact to show either that his detention or imprisonment is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath.

SEC. 3566. The returns and allegations made against it may be amended, by leave of the judge before whom the writ is returned, at any time, that thereby material facts may be ascertained. *Rev. Stat., chap. 73, art. 3, secs. 2, 3.*

SEC. 3567. The judge before whom the writ is returned, after hearing the matter, both upon the return and any other evidence, shall either discharge or remand the petitioner, or admit him to bail, or make such order as may be proper, and adjudge the costs of the proceeding, including the charge for transporting the prisoner, to be paid as shall seem right, which payment may be enforced by attachment or otherwise by the court to which the proceedings are returned (g).

SEC. 3568. At the discretion of the judge before whom the writ is returned, the affidavits of witnesses taken by either party, on reasonable notice to his agent or attorney, may be read as evidence on the trial of the return.

SEC. 3569. The officer issuing the writ in vacation, or the officer before whom it may be returned for trial, shall have the same power to compel the attendance of witnesses, or to punish a contempt of his authority, as a court of record has; and his judgment on the trial of the writ shall be considered and be enforced as if it were a judgment of such court. *Crim. Code, sec. 388, as amended 1871.*

SEC. 3570. It shall be the duty of the judge forthwith to remand the prisoner if it shall appear that he is held in custody either:

First. By virtue of any process issued by any court or judge of the United States in a cause where such court or judge has exclusive jurisdiction (h).

Second. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction (i).

Third. For any contempt specially and plainly charged in the commit-

(g) The writ should be determined as soon as possible. *Wright v. Johnson*, 5—687.

(h) The federal judges have exclusive jurisdiction on *habeas corpus* whenever the applicant is illegally restrained of his liberty under or by color of the authority of the United States, whether by virtue of a formal commitment or otherwise. *Ableman v. Booth*, 21 *How.*, 506. If the state judge or court is advised by the petition for the writ that the applicant is confined under the authority, or claim and color of authority, of the United States, by an officer of that government, the writ should be refused. Where that fact does not appear in the application for the writ, but is made to appear in the return thereto, the state judge or court, being thus judicially apprised that the party is in custody under the authority of the United States, can proceed no further. *Tarble's case*, 13 *Wall.*, 397.

(i) For a case where the writ was granted to a prisoner in the penitentiary, see *Jones, ex parte*, 27—349; to a prisoner in a city prison convicted of a violation of a city ordinance, *Martin, ex parte, Ib.*, 467.

ment by some court, judge or body politic having authority by law to commit for contempt so charged; and

Fourth. Where the time during which such party may be legally detained has not expired.

SEC. 3571. No person shall be discharged on writ of *habeas corpus*:

First. Who is in custody or held by virtue of any legal engagement or enlistment in the army or navy of the United States (j).

Second. Or who, being subject to the rules and articles of war, is confined by any one legally acting under the authority thereof.

Third. Or who is held as a prisoner of war under the authority of the United States.

Fourth. Or who is in custody for any treason, felony or other high misdemeanor committed in any other state or territory, and who, by the constitution and laws of the United States, ought to be delivered up to the legal authorities of such state or territory (k).

SEC. 3572. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, or issued by any officer in the exercise of judicial proceedings before him, such prisoner can only be discharged in one of the following cases:

First. Where the jurisdiction of such court or officer has been exceeded either as to matter, place, sum or person.

Second. Where, though the original imprisonment was lawful, yet, by some act, omission or event which has taken place afterward, the party has become entitled to his discharge.

Third. Where the process is defective in some matter or substance required by law, rendering such process void.

Fourth. Where the process, though in proper form, has been issued in a case, or under circumstances, not authorized by law.

Fifth. Where the process, though in proper form, has been issued or executed by a person who is not authorized to issue or execute the same, or where the person having the custody of such prisoner, under such process, is not the person empowered by law to detain him.

Sixth. Where the process is not authorized by any judgment, order or decree, or by any provision of law.

SEC. 3573. No judge shall in any other matter have power to inquire into the legality or justice of the process, judgment, decree or order of any court, legally constituted, nor into the justice or propriety of any commitment for contempt made by any court officer, or body corporate, according to law, and plainly charged in such commitment, as hereinbefore provided.

SEC. 3574. No person imprisoned on an indictment found in any court of competent jurisdiction, or by virtue of any process or commitment to enforce such indictment, can be discharged on *habeas corpus*, but, if the offense be bailable, he may be let to bail, and if the offense be not bailable, he shall be remanded forthwith. *Rev. Stat., chap. 73, art. 3, secs. 6, 7, 9, 10, 12.*

SEC. 3575. Where the imprisonment is for any criminal or supposed criminal matter, the judge before whom the prisoner shall be brought shall not dis-

(j) The determination of the question whether the enlistment is legal or not belongs exclusively to the federal judges. *Tarble's case*, 13 Wall., 397.

(k) See note (a) to SEC. 3385; also art. IV, sec. 2, *Const. U. S.*, and note (kk) thereto.

charge him for informality, insufficiency or irregularity of the commitment; but if, upon the trial of a *habeas corpus*, the judge shall be of opinion that the prisoner has been guilty of a misdemeanor or felony, for which such prisoner may be liable to be tried, and that the proceedings against him are so defective that he can not be detained by them, the judge shall admit him to bail, if he is entitled to bail, to appear at the court having jurisdiction over the case, or remand (1) him to the custody of the proper officer, to be conveyed to the proper county for new proceedings to be had against such prisoner. *Ib.*, sec. 13, and *Crim. Code*, sec. 388, as amended 1871.

SEC. 3576. Whenever, from sickness or other infirmity of the person directed to be produced by any writ of *habeas corpus*, such person can not, without danger, be brought before the judge before whom the writ is returnable, the person in whose custody he is may state this fact in his return, verifying the same by his oath, and the judge, if satisfied of the truth of such allegation, and the return be otherwise sufficient, shall proceed thereon to dispose of the matter in the same manner as if the prisoner were brought before him, except as in the next section is provided.

SEC. 3577. If, in the case mentioned in the last preceding section, it appear that the prisoner is legally imprisoned or restrained and not bailable, the judge shall proceed no further therein. If he ought to be held to answer for a bailable offense, an order shall be made accordingly; and when it appears the prisoner is entitled to his discharge, the judge shall make an order to that effect. *Rev. Stat.*, chap. 73, art. 3, secs. 22, 23.

SEC. 3578. Writs of *habeas corpus* shall issue upon the application of the husband, father, mother, guardian or next friend of any married woman or infant, detained by any religious or other association, or by persons acting under the authority of such association. The prosecuting attorney, where such detention is made, shall prosecute such writ without fee, if required to do so. *Crim. Code*, sec. 388, as amended 1871.

SEC. 3579. No person charged with a criminal offense shall be removed by a writ of *habeas corpus* out of the county in which he is confined at any time within fifteen days next preceding the term of the court at which such prisoner ought to be tried, except it be to convey him into the county where the offense with which he is charged is properly cognizable.

SEC. 3580. If a prisoner remanded after hearing on *habeas corpus* shall obtain a second writ, it shall be the duty of the officer or other person on whom the same shall be served to return therewith the order remanding the prisoner; and, if it appear that the prisoner was remanded for an offense adjudged not bailable, the prisoner shall forthwith be remanded without further proceedings.

SEC. 3581. It shall not be lawful for any judge, on a second writ of *habeas corpus*, to discharge the prisoner, if he is clearly and specifically charged in the order remanding him, or in the warrant of commitment, with a criminal offense; but the prisoner, on the return of such writ, shall be bailed or remanded to prison, according to the circumstances of the case.

SEC. 3582. Any person having in his custody, or under his power, any person for whose relief a writ of *habeas corpus* shall have been issued, or who

(1) See *Jones*, *ex parte*, 27—349, as to remanding prisoner.

would be entitled to a writ of *habeas corpus*, to inquire into the cause of his detention, who shall, with the intent to elude the service of such writ, or to avoid the effect thereof, transfer such person to the custody, or place him under the control or power of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars, or imprisoned not exceeding one year, or be punished by both such fine and imprisonment, and shall pay the party injured five hundred dollars. *Rev. Stat., chap. 73, art. 4, secs. 6, 7, 8, 13, 16.*

SEC. 3583. A person released upon a writ of *habeas corpus* shall not again be imprisoned or committed for the same offense, except in the following cases:

First. By the legal order or process of the court wherein he shall be bound by recognizance to appear, or some other court having jurisdiction of the same cause.

Second. Where, after a discharge for defect of proof, or for any material defect in the commitment, in a criminal case, the prisoner is again arrested on sufficient proof, and committed by legal process for the same offense.

Third. Where the discharge in any cause has been ordered on account of the non-observance of any of the forms required by law, and the party is again arrested for imprisonment by legal process, for sufficient cause, and according to the forms required by law. *Ib., sec. 5, and Crim. Code, sec. 388, as amended 1871.*

SEC. 3584. The proceedings upon a writ of *habeas corpus* shall be returned to the clerk of the circuit court of the county in which the writ was heard, or the court in which the prosecution, if any, is pending.

SEC. 3585. A person committed to prison in custody of an officer, for any criminal offense, shall not be removed from said prison or delivered to the custody of any other officer, except in the following cases:

First. By writ of *habeas corpus*, or some other legal writ (m).

Second. When he may be delivered to an officer, to be removed to some common jail.

Third. In case of fire, infectious disease or other great necessity.

Fourth. When the prisoner is charged, by affidavit, with treason or felony, committed in some other state or territory of the United States of America, in which case he shall, on the demand of the executive of such state, or the governor of a territory in the United States, from which he fled, be sent thither in custody (n), by the order of any circuit court or judge thereof, or may be bound by recognizance, with good surety, by said court or judge, to appear at the proper time and place, and surrender himself to the court or tribunal having jurisdiction of the offense, if the said court or judge shall, upon consideration of the evidence, be of opinion he should be put upon his trial. *Crim. Code, sec. 388, as amended 1871.*

(m) It is in the discretion of the circuit court to have a competent witness, who is confined in jail, brought before it by *habeas corpus*, to testify in behalf of the defendant in a criminal cause. *Gibony v. Rogers, judge, 32—462.*

(n) See SECS. 3390-3398.

Warrant in Lieu of Habeas Corpus—When Issued.

SEC. 3586. When it shall appear by satisfactory proof that any person is illegally imprisoned or restrained of his liberty, and that there is good reason to believe that he will be carried out of the state, or suffer some irreparable injury before he can be relieved by a writ of *habeas corpus*, any court or judge authorized to issue such writ may issue a warrant reciting the facts, and directed to any sheriff, coroner, constable, or other person, commanding him to take the prisoner and to bring him forthwith before such court or judge, to be dealt with according to law.

SEC. 3587. Where the proof shall also be sufficient to justify the arrest of the person having such prisoner in his custody, as for a criminal offense committed in the taking or detaining such prisoner, the warrant shall also contain an order for the arrest of such offender.

SEC. 3588. The warrant shall be executed according to the command thereof, and, when the prisoner shall be brought before the court or judge, the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of *habeas corpus* had been issued in the first instance.

SEC. 3589. If the person having such prisoner in custody shall be brought before a court or a judge as for a criminal offense, he shall be examined, committed, bailed or discharged in like manner as in other criminal cases of like nature. *Rev. Stat., chap. 73, art. 4, secs. 1-4.*

CHAPTER LXXV.

HOMESTEAD OF WIDOW AND CHILDREN.

SECTION

3590. Homestead exemption for benefit of widow; rights of minor children.

3591. for benefit of minor orphan children.

SECTION

3592. Homestead, how claimed by widow and children.

3593. reservation to be entered of record.

SECTION 3590. If the owner of a homestead die, leaving a widow, but no children, and said widow has no separate homestead in her own right, the same shall be exempt, and the rents and profits thereof shall vest in her during her natural life. *Provided*, that if the owner leaves children, one or more, said child or children shall share with said widow, and be entitled to half the rents and profits till each of them arrives at twenty-one years of age; each child's rights to cease at twenty-one years of age, and the shares to go to the younger children, and then all to go to the widow; and, *provided*, that said widow or children may reside on the homestead or not. And in case of the death of the widow, all of said homestead shall be vested in the minor children of the testator or intestate (§).

SEC. 3591. The homestead provided for in the constitution shall inure to the benefit of the minor children, under the exemptions therein provided (a), after the decease of the parents. *Art. IX, secs. 6, 10, Const.*

(§) A wife has no interest in the homestead during her husband's life, nor vested right to a future interest, and her concurrence in its alienation is not necessary. *Klenk v. Noble*, 37—298; *Lindsay v. Merrill*, 36—545; *Johnston v. Turner*, 29—280; *Turner v. Vaughan*, 33—462.

A widow is entitled to homestead as well against heirs as against creditors of her deceased husband. *Hoback v. Hoback*, 33—399; *Trotter v. Trotter*, 31—145.

But the widow can not create a homestead right in the land of the husband after his death; he must have impressed the homestead character upon the land during his life, and she must succeed him in that right. *Hoback v. Hoback* and *Trotter v. Trotter*, *supra*; *Johnston v. Turner*, 29—280; *Ward v. Mayfield*, 41—94.

A widow who has no other place of residence is entitled to the homestead of her deceased husband for life, whether she occupies it or not, and, where there are no minor children, is not accountable to any one for rents received for it. *Gainus v. Cannon*, 42—503.

As to what will impress the homestead character upon the land and transmit the homestead right to the widow and children, see *McKenzie v. Murphy*, 24—155; *Tumlinson v. Swinney*, 22—400; *Williams v. Dorris*, 31—466; *Trotter v. Trotter*, 31—145; *Bennett v. Hutson*, 33—762; *Lindsay v. Merrill*, 36—545; *Euper v. Alkire*, 37—283; *Klenk v. Noble*, *Ib.*, 298; *Ward v. Mayfield*, 41—94; *Brown v. Watson*, *Ib.*, 309; *Gainus v. Cannon*, 42—503; *Harbison v. Vaughan*, *Ib.*, 539; *Patrick v. Baxter*, *Ib.*, 175.

A minor can not waive or abandon his right to a homestead during minority; and, being supposed to be under the control of others, does not perfect it by residence. The purchaser, at a probate sale, of the tract of land to which the homestead of a deceased parent appertained must take notice of the minor's right, and, if he use the homestead for his profit, must account to the minor for the rents. *Altheimer v. Davis*, 37—316; *Booth v. Goodwin*, 29—633.

As to duty of guardian of infants, see last case cited.

During the existence of the homestead right, the children have such an estate and right of possession as will enable them to maintain ejectment for the land. *Ib.*

The homestead descended to widow and children of a decedent is not the subject of partition. *Trotter v. Trotter*, 31—145; *Johnston v. Turner*, 29—292.

As to vendor's lien, see *Tunstall v. Jones*, 25—272.

For rights of widow and children in homestead of deceased husband, under constitution of 1868, see *Bennett v. Hutson*, 33—762; *Turner v. Vaughan*, 33—454; *Gilbert v. Neely*, 35—24.

(a) See *art. IX, secs. 3, 4, 5, Const.*

SEC. 3592. Whenever any resident (b) of this state shall die, leaving a widow or children who may desire to claim the benefit of section 3590 or section 3591, she or they, as the case may be, shall file with the clerk of the probate court of the county in which the homestead is situate an accurate description of the land so claimed, or, if the same be a lot in any city, town or village (c), a description of said lot, and shall apply to have the same reserved from sale.

SEC. 3593. It shall be the duty of such clerk, immediately after the filing of said description and application, to enter upon the records of said court that said homestead has been duly reserved from sale upon the application of such claimant or claimants. *Act April 25, 1873, secs. 1, 2.*

(b) The domicile of the wife and minor children follows that of the husband, and their actual personal residence at the homestead place is not necessary to perfect the right in him, or to entitle them to the benefit of it after his death. Where the head of a family has, in good faith, selected a place of residence, owns the land, and has entered and resides upon it, the absence of the wife and children might require stronger proof of intention, but nothing more. *Johnston v. Turner*, 29—280.

(c) For construction of the words "town or city lot" (in act of 1852), see *Wassell v. Tunnah*, 25—101.

CHAPTER LXXVI.

IMMIGRATION.

SECTION

3594. Commissioner of state lands shall arrange statistics, etc.

SECTION

.3595, 3596, 3597. To induce immigration, commissioner may visit principal cities, etc.

SECTION 3594. It shall be the duty of the commissioner of state lands to collect and methodically arrange all the statistics available in relation to the agricultural, manufacturing and mineral resources of this state which, in his opinion, would be of useful information to persons who may wish to emigrate from any part of the United States or Europe to this state, and to have such statistics published in pamphlet or circular form, or both, in the English, German and such other languages as may be necessary to make them useful in the countries from which immigration usually comes to the United States, and such a number of such pamphlets or circulars, or both, as in his opinion will be necessary to give reasonable information to those of other countries who may wish to emigrate by the inducements offered by this state to emigrants, to be used by such commissioner for distribution as he may think most advantageous to secure a flow of immigration to this state.

SEC. 3595. If such commissioner shall at any time deem it necessary, in order to induce immigration into this state, he may visit and make arrangements with emigration societies in the principal cities of the United States for that purpose, and, with the approval of the governor, he may visit such foreign states or countries as the governor may direct.

SEC. 3596. When discharging the duties provided for in the preceding section said commissioner shall be allowed his actual traveling expenses, which expenses, when presented to the auditor of state, accompanied by the official certificate of such commissioner that such account is correct and just, and the items charged therein were actual and necessary traveling expenses incurred in performing the duties therein specified, the auditor shall audit and allow such account, and draw his warrant on the treasurer for the amount thereof.

SEC. 3597. Said commissioner shall not be allowed or receive any additional or greater salary or compensation for such services than the annual salary of his office. *Act July 15, 1868, secs. 2 and 4.*

CHAPTER LXXVII.

IMPEACHMENT (a).

SECTION

3598. Impeachment defined.
 3599, 3600. articles of, defined, and form of.
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 3602. day of hearing fixed by senate.
 3603. precept, how served.
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 3605, 3606. vacancies by, how filled.
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3617. Impeachment, senate may proceed *ex parte*, when.
 3618. oath of senators, on trial of.
 3619, 3620. powers of senate, in trial of.
 3621, 3622. accused to be heard in person or by counsel; votes, how taken, etc.
 3623. when senator not to vote on.
 3624, 3625. costs in.
 3626. no bar to indictment.
 3627, 3628. transcript of proceedings of.
 3629. when prosecutor in, liable for costs.

SECTION 3598. An impeachment is the prosecution by the house of representatives, before the senate, of the governor or other civil officer for misdemeanor in office.

SEC. 3599. The articles of impeachment are the written accusation of the officer, drawn up and approved by the house of representatives.

SEC. 3600. The articles of impeachment shall state, with reasonable certainty, the misdemeanor in office for which the officer is impeached, and, if there be more than one, they shall be stated separately and distinctly.

SEC. 3601. When the articles of impeachment have been approved by the house of representatives and impeachment ordered, a committee shall be appointed to prosecute it, whose chairman, within five days, shall lay the same before the senate. *Crim. Code, secs. 389-392.*

SEC. 3602. The senate shall appoint a day for hearing the impeachment, and the accused shall be summoned by a precept issued by the secretary of state to appear on that day.

SEC. 3603. The precept shall be served by delivering a copy of the precept and of the articles of impeachment to the accused in person, if to be found, or leaving the copies at his residence with some member of his family over sixteen years of age. *Ib., sec. 393, as amended 1871.*

SEC. 3604. When any officer shall be impeached, he is hereby declared to be suspended from exercising his office, after he shall be notified thereof, until he is acquitted. *Rev. Stat., chap. 75, sec. 3.*

SEC. 3605. In all cases of impeachment of any officer of this state, the governor is authorized to appoint some suitable person to perform the functions of the office from which said officer is suspended, until the case of impeachment is disposed of by trial or otherwise according to law; and the person so appointed shall receive the same salary and emoluments as the officer impeached. *Act May 26, 1874.*

SEC. 3606. If the president of the senate be impeached, notice thereof shall be immediately given by the house of representatives to the senate, that another president may be appointed. *Rev. Stat., chap. 75, sec. 4.*

(a) See art. XV, Const.

SEC. 3607. The secretary of the senate, at the request of the chairman or of the accused, shall issue process for summoning witnesses and for producing books and papers.

SEC. 3608. In case of disobedience of the process, the senate shall order the clerk to issue process for arresting the witnesses and seizing the books and papers.

SEC. 3609. Said process may be executed by the peace officers of the several counties, or by officers specially appointed for that purpose by the senate.

SEC. 3610. The senate shall have power of coercing the attendance of witnesses, and of compelling them to testify, and of coercing the production of books and papers, by fine and imprisonment to such extent as shall be necessary.

SEC. 3611. Witnesses shall have the same compensation for travel and attendance, and the same exemption in going, remaining and returning, as witnesses in the circuit courts.

SEC. 3612. All officers executing the process and orders of the senate shall have like fees for their services. *Crim. Code, secs. 394-396.*

SEC. 3613. Upon the appearance of the accused, he shall have reasonable time to answer the impeachment; and when the answer shall be filed the committee may reply thereto.

SEC. 3614. When issue shall be joined on any such impeachment, the senate shall appoint a time for the trial thereof.

SEC. 3615. The president of the senate, at the request of the chairman or of the accused, shall issue commissions to take depositions where the witness is unable to attend from sickness or other infirmity, or where the witness is without the limits of the state.

SEC. 3616. Such depositions shall be taken in the same manner, and the same notice shall be given, as where depositions are to be taken in the circuit court.

SEC. 3617. If the accused shall not appear after being notified, or, after appearing, shall fail to answer, the senate may proceed *ex parte*. *Rev. Stat., chap. 75.*

SEC. 3618. Before the senate proceeds to try the impeachment, the president of the senate and every senator present shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully and impartially try the impeachment against A. B., and give my decision according to law and the evidence." *Crim. Code, sec. 397.*

SEC. 3619. The members being sworn, the senate shall proceed to hear, try and determine such impeachment, and may adjourn the trial to any other time.

SEC. 3620. The senate shall determine all questions of law arising during the trial upon the admissibility of evidence, the competency of witnesses or otherwise, and may punish any person for contempt committed toward the senate, or for obstructing the administration of justice on such trial, in as full a manner as any court of record could do for a like contempt toward such court.

SEC. 3621. In all such trials the accused shall have a right to be heard by himself and his counsel.

SEC. 3622. All votes on any question whatever shall be given *viva voce* and entered on the journals, and no judgment or sentence of conviction shall be given against any person upon any impeachment without the concurrence of two-thirds of the senators elected. *Rev. Stat., chap. 75, secs. 12, 13.*

SEC. 3623. The senate shall determine what amount of absence of a senator during the trial shall exclude the senator from voting in the final decision.

SEC. 3624. If the accused is acquitted, he shall be entitled to his costs, to be taxed by the secretary of the senate and paid by the treasurer.

SEC. 3625. If convicted, he shall pay the costs, to be taxed by the secretary and recovered by motion by the attorney-general in the Pulaski Circuit Court at the first term thereof, without notice, or afterward on notice. *Crim. Code, secs. 398, 399.*

SEC. 3626. The party convicted or acquitted shall, notwithstanding such acquittal or conviction, be subject to indictment, trial, judgment and punishment for any indictable offense according to the law of the land.

SEC. 3627. The secretary of the senate shall make out a transcript of the proceedings had on any impeachment, and of the judgment of the senate, whether of conviction or acquittal.

SEC. 3628. Said transcript shall be signed by the officer presiding at the trial and attested by the secretary, and deposited in the office of the secretary of state. *Rev. Stat., chap. 75, secs. 14, 15.*

SEC. 3629. If the impeachment is prosecuted on the petition of some citizen of the state, whose name is set at the foot of the articles of impeachment, he shall be liable for the costs of the accused if he is acquitted, and also for the costs of prosecuting the impeachment, and in that case the state shall not be liable to pay any part of the costs; and if the accused is convicted, the petitioner shall be entitled to recover of the accused the costs of the impeachment, for which he is liable; the costs to be taxed by the secretary of the senate and recovered by suit in a court of competent jurisdiction. *Crim. Code, sec. 400.*

CHAPTER LXXVIII.

IMPOUNDING STOCK.

SECTION

3630. When and where county court may prohibit the running at large of hogs, sheep and goats.
3631. Petition for such prohibition, by whom to be signed.
3632. What shall be stated in petition.
3633. Petitioners to deposit with clerk sum sufficient to pay costs, etc.
3634. Notice of filing petition.
3635. Publication of notice.
3636. Order of prohibition, when made and when to take effect.
3637. Copies of order, when and where to be posted.
3638. When and by whom stock forbidden to run at large, may be impounded.

SECTION

3639. Owner of impounded stock to have notice; and entitled to possession on payment of fees and damages.
3640. Fees for impounding stock; damages done by stock, how assessed.
3641. Owner failing to pay fees and damages, stock to be sold; notice of sale, etc.
3642. If owner can not be found, on affidavit, taker up may sell stock; notice of such sale, etc.
3643. What fence to be lawful, where this act becomes operative.
3644. County in no case to be liable for costs, and petitioners to pay same in all cases.
3645. How order obtained under this act may be set aside.

SECTION 3630. Upon the written petition of a majority of the qualified electors of any county, bordering upon a navigable stream, and having territory in cultivation subject to overflow, or sub-division of a county consisting of not less than thirty-six square miles, where said sub-division borders upon a navigable stream and contains territory in cultivation subject to overflow, being filed in the county court of said county, praying an order to prevent the running at large of hogs, sheep and goats within said county, or sub-division, as the case may be, it shall be the duty of the county court to make such order when the petitioners have complied with this act.

SEC. 3631. When the qualified electors of any county or sub-division of a county, consisting of not less than thirty-six square miles, desire to avail themselves of the benefits of this act, they shall file their petition, signed by a majority of the qualified electors of the county, or sub-division, in the county court of the county at a regular term thereof.

SEC. 3632. Said petitioners shall set forth clearly, whether it is their intention to prevent the running at large of all the animals mentioned in section 3630, or only one or more classes thereof, and, if the petition be from the qualified electors of a sub-division, such sub-division shall be particularly described, and the boundaries thereof clearly designated.

SEC. 3633. The county court, after the filing of such petition, shall proceed no further with the matter until the petitioners, or some of them, deposit a sufficient amount of money with the clerk of the court to pay all costs, fees and expenses that may arise in making said order, the amount so deposited to be determined by the court, and the clerk's receipt therefor to be filed with the petition.

SEC. 3634. After the filing of the petition as herein provided the court shall make an order, directing the clerk to cause notice to be given immediately of the filing of the petition. The notice shall specify the class of animals it is

proposed shall not run at large, and, if for a sub-division of a county, the territory described in the petition.

SEC. 3635. Such notice shall be published in some newspaper published in the county, if there be one (*). If no paper is published in the county, said notice shall be posted at the court-house door, and at each voting precinct in the county, if the petition is for a county; if for a sub-division, then such notice shall be posted at three of the most public places in such sub-division.

SEC. 3636. At the next regular term of the county court after the filing of such petition, the court shall investigate the matter, and if on such investigation it appears that a majority of the qualified electors of the county, or sub-division, as the case may be, signed the petition, and that the notice herein provided for was given, it shall make an order prohibiting the running at large of such stock as may be described in the petition in the territory described, or the county, as the case may be, after the first day of January next after said order is made.

SEC. 3637. Immediately after the making of said order the clerk shall cause copies thereof to be posted at every voting precinct in the county, if the order is made for the county; if for a sub-division, then a copy of the order shall be posted in three of the most public places in the sub-division, and after the first day of January it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in said order.

SEC. 3638. If any stock, forbidden to run at large under the provisions of this act, shall enter the cultivated lands of another, without his consent, in any county or sub-division in which the provisions of this act have become operative, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid.

SEC. 3639. Whenever any stock is impounded under the provisions of this act, notice thereof shall be given to the owner, if known, and such owner shall be entitled to possession thereof upon payment of fees and damages.

SEC. 3640. Any person impounding stock under the provisions of this act shall be entitled to the following fees: Ten cents a day per head for hogs, ten cents per day per head for goats and five cents per day per head for sheep. The damages done by such stock may be assessed by any three disinterested householders of the county or sub-division, who shall first take an oath before some officer of the county authorized to administer oaths to view and assess the damages fairly and honestly, and their assessment shall be final.

SEC. 3641. If the owner or agent of stock impounded, after being notified thereof, shall neglect to pay the fees and damages, the taker-up of such stock may sell the same at public auction for cash, after first giving five days' notice of the time, place and terms of such sale, by one hand-bill, posted on the court-house door of said county, and a copy thereof to be delivered to the owner of said stock, if known, and apply the proceeds, after deducting expenses of sale, to the satisfaction of his fees and damages, and pay the balance to the owner of the stock.

SEC. 3642. If no owner can be found of stock so impounded, the taker-up may, after the expiration of five days, make affidavit before a justice of the

(*) See chap. 94.

peace describing the stock, and that the owner is unknown to affiant, which affidavit shall be delivered forthwith by such justice to the clerk of the county court, to be kept in his office for inspection. After the filing of said affidavit, the taker-up may sell such stock, as in case where the owner is known, except a copy of the notice posted is not to be delivered, and if any sum remains, after satisfying his fees and damages, he shall report the same, under oath, to the clerk of the county court, and pay the same over to the county treasurer, to be paid, received and disbursed as in case of estrays.

SEC. 3643. Whenever this act becomes operative in any county or sub-division, any fence within such county or sub-division shall be deemed a lawful fence that is made of post and wire or plank, where the top wire or plank shall be five feet from the ground, and the wire or plank sufficiently close to keep out the class of stock not embraced within this act, or the order of the court made in pursuance hereof.

SEC. 3644. In no case shall the county be liable for any cost by reason of any county or sub-division availing or attempting to avail themselves of this act, but in all cases the whole expense shall be paid by the petitioners.

SEC. 3645. Whenever any county or sub-division have availed themselves of this act, it shall be lawful for a majority of the qualified electors of the county or district, as the case may be, to petition the county court to set aside the order prohibiting the stock mentioned from running at large, and the same notice shall be given, and proceedings had, as herein provided for obtaining said order; and the court shall set aside the former order if, on investigation, it finds a majority of the qualified electors have petitioned therefor, and that the proper notice has been given. *Provided*, that the petitioners shall pay all the cost for having said order set aside. *Act March 2, 1883.*

CHAPTER LXXIX.

INCLOSURES.

SECTION

3646. Fields, etc., how to be inclosed.
 3647. Fences and posts, height of, how to be fixed.
 3648. Rail fences, how high.
 3649. Lawful wire fence.
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 3651. Penalty when animals break inclosures.

SECTION

3652. Fence, how viewed by order of justice.
 3653. Penalty for killing animals when fence insufficient.
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SECTION 3646. All fields and grounds kept for inclosures shall be inclosed with a fence sufficiently close, composed of sufficient posts and rails, posts and paling, palisades, or rails alone, laid up in the manner commonly called worm fence.

SEC. 3647. All fences composed of posts and rails, posts and palings, or palisades, shall be five feet high, and the posts shall be deeply and firmly set in the earth.

SEC. 3648. All fences of rails alone, commonly called worm fence, shall be five feet high. *Rev. Stat., chap. 76.*

SEC. 3649. All fences made of barbed wire and plank, securely fastened to substantial posts deeply and firmly set in the earth, eight feet apart and five feet above the ground, one plank or strip of timber not less than two inches wide, one strand of wire to be placed above the strip of timber or plank on top of posts, with one plank 1x12 inches or two planks 1x6 inches at the bottom, with four strands of wire properly spaced between such planks, shall be a lawful fence. *Act March 22, 1881.*

SEC. 3650. In all cases the sufficiency of a fence shall be adjudged by the persons summoned to view such fence, in accordance with the provisions of this chapter.

SEC. 3651. If any horse, cattle or other stock shall break into any inclosure, the fence being of the height and sufficiency required by law, or, if any hog, pig or shoat shall break into the same, the owner of such animal shall, for the first trespass, make reparation to the party injured for the true value of the damages he may have sustained, and for every trespass thereafter double damages, to be recovered with costs, and for the third offense from any of the beasts aforesaid breaking into such inclosure the party injured may kill and destroy the beasts so trespassing without being answerable for the same.

SEC. 3652. Upon the complaint of the party injured to any justice of the peace of the township, said justice shall issue an order to three disinterested householders of the neighborhood, not related to the parties reciting the complaint, and requiring them to view the fence where the trespass is complained of and take a memorandum of the same, and their testimony in such case shall be good evidence on the trial touching the lawfulness of the fence.

SEC. 3653. If any person damaged for the want of a sufficient fence shall hurt, wound, lame or kill, or cause the same to be done, any of the animals in

this chapter mentioned, such person shall be liable to the owner thereof for double damages, with costs.

SEC. 3654. When any person shall inclose any land adjoining another's land already inclosed with a fence, so that any part of the fence first made becomes the partition fence between them, in such case the charge of such division fence, as far as it is inclosed on both sides, shall be equally borne and maintained by both parties. *Rev. Stat., chap. 76.*

CHAPTER LXXX.

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ACCEPTANCE OF GRANT FROM THE UNITED STATES.

SECTION 3655. The State of Arkansas hereby signifies and declares her assent to the grant of land and land scrip authorized and contained in the act of congress of the United States, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, and altogether on the terms and conditions in said act provided; and also to the act of congress entitled "An act to amend the fifth section of an act entitled 'An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts,' approved July 2, 1862, so as to extend the time within which the provisions of said act shall be accepted, and such colleges established," approved July 23, 1866.

SEC. 3656. The State of Arkansas shall observe and perform the conditions in said enactment of July 2, 1862, contained and provided, that is to say:

First. The State of Arkansas will replace any portion of the fund provided by section four of said act, or any portion of the interest thereon, which shall by any action or contingency be diminished or lost, so that the capital fund shall remain forever undiminished, and will apply the annual interest thereon regularly, without diminution, to the purposes mentioned in the fourth section of the said act of congress, subject only to the exception contained in section five of the act last referred to.

Second. The State of Arkansas, further assenting, agrees that no portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation or repair of any building or buildings.

Third. The State of Arkansas further agrees to provide at least not less than one college, as described in the fourth section of said act of congress, and in accordance with the act amendatory of said act; and also to pay the United States the amount received of any lands previously sold to which title of purchasers was valid.

Fourth. The State of Arkansas further agrees that an annual report shall be made regarding the progress of each college, in accordance with paragraph fourth of section five of said act of congress of July 2, 1862.

SEC. 3657. The secretary of state shall transmit to the commissioner of the general land office, at Washington, and cause to be filed in the office of said commissioner a duly authenticated copy of this act.

SEC. 3658. This act shall take effect from the date of its passage, as an act of acceptance of the grant of congress before referred to, and from the date of the filing of the same with the commissioner of the general land office, as to

the time for the providing of the colleges, as required by said act of congress of July 2, 1862 (a). *Act Jan. 31, 1867.*

SEC. 3659. Such lands and land scrip as may accrue to this state by virtue of an act of the congress of the United States, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, and the acts amendatory thereof, shall, together with the avails thereof, be devoted and forever applied to the endowment and maintenance, under such laws or articles of incorporation as may be by the general assembly hereafter provided, of an institution of learning to be styled "The Arkansas Industrial University," wherein shall be taught, in addition to the usual course of study prescribed in universities, the science and practice of agriculture, the mechanic arts, engineering and military science and tactics; tuition in such university to be, as near as may be, without charge, and pupils to be apportioned to the several counties as the legislature may prescribe. *Provided*, there shall be established honorary scholarships without charge, for the benefit of descendants of soldiers and seamen who served in the armies and navy of the United States during the late rebellion, preference being given to the descendants of such as died or were disabled in said service; and also one honorary scholarship to each county, to be selected for superior merit and proficiency from the public schools of such county. *Act July 23, 1868, sec. 2.*

FINANCIAL AGENT.

SEC. 3660. The treasurer of state shall be a financial agent and trustee of said state, to apply for and receive of the United States government all the land scrip to which this state may be entitled by reason of her acceptance of the provisions of the act of congress entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, and the acts amendatory thereof. *Act March 27, 1871, sec. 1.*

SEC. 3661. The treasurer of state is hereby fully empowered to offer and sell said land scrip in whatever market he can dispose of the same, or any part thereof, to the best advantage for said state, and with the proceeds of such sale to purchase interest-bearing bonds of the United States; such scrip to be sold at the highest market rates, and such bonds to be purchased at the lowest prices for which they can be had in any market; or, if more advantageous, the treasurer of the state, as financial agent, may, upon the best practicable terms, buy the bonds of Washington County, Arkansas, and the bonds of the Town of Fayetteville, Arkansas, issued for the purpose of securing the location of said Arkansas Industrial University at said town and county, provided such financial agent shall be subject to the direction and control of the board of trustees hereinafter mentioned, and he shall not pay for said bonds a greater sum per dollar than may be sanctioned by resolution of said board. *Act March 13, 1873.*

SEC. 3662. Upon the location of said university, as herein provided for, said board may employ such architects and mechanics as may be thought best, and the general plan and specifications of such buildings as are to be erected

(a) A duly authenticated copy of this act was filed in the office of the commissioner of the general land office, at Washington, D. C., February 12, 1867.

shall be agreed upon; and the said board shall give public notice, and receive bids for the furnishing of material and the erection of such buildings, as a whole or in parts, as to them shall seem best; and they are empowered to appoint a committee or committees of their own number, or of other discreet citizens, to receive bids and enter into contract or contracts for such materials and work, with power to reject bids deemed too high, or of parties not solvent or sufficiently secured, and such further discretionary powers as may be deemed advisable; and also to appoint such commissioners, architect or other superintendent of the buildings as may be necessary, from time to time, to inspect the same, and see that payments are not made upon the work unless the same comes fully up to the plan and specifications agreed upon by said board; payments to be made upon material and work according to contract, upon the certificate of the architect or inspector and the building committee, approved by the president of the board, and out of the funds hereinafter provided for.

SEC. 3663. Upon the assent of said board to accept lands or other property upon the terms and for the purposes herein specified, the same shall be deeded by the subscribers or donors to the State of Arkansas for the use and benefit of said industrial university (*).

SEC. 3664. All property or bonds donated or bid for the location of said university, and accepted by said board of trustees, shall constitute a part of the funds of said university, and such bonds shall be held by said financial agent, to be by him sold or deposited under the direction of said board. *Provided*, that if said bonds are offered for sale they shall be first advertised in the county where issued, and there offered for sale at such price as may be fixed by said board, and they shall not thereafter be sold in any other market for a less sum than that at which they were offered in said county until they are again offered in the county at such reduced rates as agreed upon; said bonds to be issued in equal numbers of five hundred and one thousand dollars each, with coupons for the amount of the accruing interest thereto attached, which bonds and coupons shall be procured by the said financial agent, and each bond shall be presented to and signed by the presiding judge of such county court, or the presiding officer of such town or city council, and said bonds and the coupons thereto attached shall be signed by the clerk of such county or the recording officer of such town or city, and the overdue coupons of such bonds shall always be receivable for all taxes of the county or corporation by which they were issued.

SEC. 3665. It shall be the duty of said board to cause to be erected upon such location as they may select, with all practicable speed, suitable buildings of a value fully equal to the donations, bids and subscriptions made by the county, corporation and individuals where such subscription is made; and said county or corporation shall not be required to pay interest on the bonds that may be issued by it more than one year until said buildings are erected and a school organized therein; and should such county or corporation be required to pay more than one year's interest on such bonds before such school is organized, the amount so paid shall be refunded to it by the state.

(*) This act authorized the donation of bonds, etc., by counties, etc., to influence location of institution.

And it is hereby made the absolute duty of the county court of the county or corporation council issuing such bonds to annually levy a tax and collect in currency, or overdue coupons of such bonds, a sum fully sufficient to pay all accruing interest on such bonds and incidental expenses connected therewith; and, upon failure to do so, it shall be the duty of any court of competent jurisdiction, upon the application of any one or more holders of such bonds, to compel such county court or council forthwith to levy and collect such sums as will fully pay all such interest as herein provided for (b). *Act March 27, 1871, secs. 7-10.*

BOARD OF TRUSTEES.

SEC. 3666. Hereafter the board of trustees of the Arkansas Industrial University shall consist of the governor of the state, the state superintendent of public instruction, the president of the university faculty, for the time being, and six other members, to be appointed by the governor with the advice and consent of the senate, one to be selected from each congressional district and one from Washington County. *Act March 7, 1883.*

SEC. 3667. The governor shall appoint said trustees immediately after the passage of this act, and they shall enter upon the discharge of their duties on the first day of June, A. D. 1883. *Act March 23, 1883, secs. 1 and 2.*

SEC. 3668. The governor shall be president of the board, and in his absence the state superintendent of public instruction shall preside. If they are both absent, the board shall elect one of their number to preside.

SEC. 3669. If a vacancy occurs in said board, the governor shall fill the same by appointment from the district in which the vacancy occurs, subject to the approval of the senate at its next session.

SEC. 3670. Said board of trustees shall be governed by existing laws, not in conflict herewith. *Act March 7, 1883, secs. 2-4.*

SEC. 3671. They shall have all authority and necessary powers to carry out the provisions of the act of the general assembly entitled "An act for the location, organization and maintenance of the Arkansas Industrial University, with a normal department therein," approved March 27, 1871, and all subsequent acts supplemental or amendatory thereof. *Act May 30, 1874, secs. 1 and 2.*

SEC. 3672. They shall meet annually, and shall have power to hold adjourned meetings when the business of the university actually requires it, or the president of the board may call a meeting of the board, when he is satisfied the interests of the university require it, or when five members of the board petition him so to do. *Act May 30, 1874, sec. 4.*

SEC. 3673. The annual meetings of said board shall be at the university building, on Monday of the last week of the commencement exercises of each year. *Act March 6, 1875, sec. 1.*

SEC. 3674. A majority of said trustees shall constitute a quorum to do business, but a less number may adjourn from time to time and send for absent members.

(b) The Arkansas Industrial University was located, under this act, at Fayetteville, in the County of Washington, in the latter part of the year 1871, the County of Washington voting one hundred thousand dollars and the Town of Fayetteville thirty thousand dollars, in thirty-year eight-per-cent. bonds, to the university, upon condition that it should be located where it now is. The university was formally opened for the reception of pupils January 22, 1872.

SEC. 3675. In case of a tie, the president of the board, the president of the university and secretary of the board, by majority, shall cast the deciding vote; in all other cases they shall each have one vote as other members of the board (*). *Act May 30, 1874, sec. 2.*

SEC. 3676. It shall be the duty of said board of trustees to have provided suitable furniture for said university, and to employ all necessary supervisors, professors and teachers, agents or servants, required to organize and carry on such university according to the true spirit and intent of the acts of congress in reference thereto, with a normal department therein as in this act provided; but they shall observe strict economy, and incur no incidental expenses, and fill no professorships not absolutely required in the earlier sessions of said university; but they may, from time to time, as the finances will allow, and the advancement and necessities of the institution require, fill other chairs, and add to the buildings, furniture, libraries, apparatus and other things proper to the full operation and well-being of a first-class university.

SEC. 3677. The president of the board and the financial agent herein named shall attend at the times and places herein named and required, and shall perform all such duties as are herein required or may be directed by said board, without salary or fees or any compensation whatsoever, except such as they now receive for other services for the state; but their own and the trustees' necessary traveling expenses and board bills, and other necessary incidental expenses in carrying this act into effect, shall be paid by the state, upon the official certificate of the person incurring such expense being approved by the president of the board, which shall be a voucher in the office of the auditor of state. Said trustees shall each receive two dollars and fifty cents for each day necessarily consumed on duty as such trustees, payable as above provided for.

SEC. 3678. The state, for the use of said university, shall have a right of action against any and all persons who may commit trespass against or upon any of the property or effects of said university, or upon the breach of any covenant, contract or promise made with said school board, or any sub-committee or agent appointed by such board. Such proceedings shall be prosecuted by the prosecuting attorney of the district, or such counsel as may be employed under the direction of said board. And, if sued, all the law officers of the state shall, free of charge, defend said board, their committees or agents, in all matters growing out of acts done in connection with the business of said university.

SEC. 3679. All things necessary to be had or done to carry this act into full force and effect, and to completely organize and put in full operation the university herein provided for, and not specifically named herein, shall be done by or under the direction of said board of trustees, and they and their committees and agents shall keep full accounts of all expenditures, and the president of said board, in his biennial report, shall fully set forth the advancement and condition of the university, the extent of the real estate, improvements and other property owned by it, and a detailed account of all expenditures made by such board, or under its direction, in reference to any and all business connected with said university, and shall recommend such further legislation as the interests of the institution may require.

SEC. 3680. Said board of trustees shall fix, and from time to time regulate,

(*) But see SEC. 3682, under which the secretary may be a person not a member of the board.

the fees, allowances, salaries and wages to be paid architects, inspectors, professors, teachers, agents, committees, servants or other necessary employes; and they shall observe rigid economy in such expenditures, and each of said trustees shall take an oath, before entering upon duty, to faithfully and diligently discharge their duties according to law.

SECRETARY AND TREASURER.

SEC. 3681. At the annual meetings of said board they shall elect a secretary, a treasurer and such committees as to them may appear necessary. *Act May 30, 1874, sec. 3.*

SEC. 3682. Said board of trustees are authorized to elect their secretary of their own number, or such other competent person as they may deem proper.

SEC. 3683. The secretary shall take charge and control of such property, perform all such labor and services, keep such books and make such returns, as the board of trustees may direct or require.

SEC. 3684. Said board may elect their treasurer of their own number, or such other person as they may deem proper.

SEC. 3685. The said treasurer and secretary shall each execute a bond to the State of Arkansas, for the use of the university, with security approved by the board or the president thereof, in vacation, in such sum as they may require, not less than ten thousand dollars, for the faithful performance of all the duties that may appertain to their respective offices, which bonds shall be filed in the office of the secretary of state. *Act March 6, 1875, secs. 2 and 3.*

SEC. 3686. Said treasurer shall at no time draw from the treasurer of state or have on hand more than ten thousand dollars, and the same shall be paid out as the board shall direct (*). *Act March 27, 1871.*

SEC. 3687. The board shall have power to remove such officers, and they may allow them a reasonable compensation for their services, not to exceed the sum allowed herein to trustees for the time actually employed. *Ib.*

APPROPRIATIONS FOR UNIVERSITY.

SEC. 3688. The general assembly, in appropriating moneys for the benefit of said university, shall specify the precise amount that it intends to appropriate for each and every purpose, and the trustees of said institution shall apply each sum as thus directed, and in no other way. *Act Feb. 20, 1883.*

RULES AND REGULATIONS.

SEC. 3689. Said board of trustees shall have power to prescribe all necessary rules and regulations for the government and discipline of said university, and prescribe the grade and number of honorary scholarships, and prescribe the rules by which scholars who are to be admitted free shall be elected equally from the various parts of the state, subject to such changes as the legislature may hereafter make.

(*) See SEC. 3688.

BODY CORPORATE AND POLITIC.

SEC. 3690. Said board of trustees are authorized and empowered to form themselves into a body corporate and politic, under the general laws of this state now existing or hereafter to be put in force; and, upon the complete formation and organization of such corporation, they shall have and exercise all the powers and privileges allowed by the constitution and laws of the state to any like corporation in all matters and things pertaining to the location, organization, maintenance and regulation or support of said university. *Act March 27, 1871, secs. 18 and 19.*

REGENT.

SEC. 3691. Said board of trustees are hereby empowered, if the interest of the university requires it, to elect a regent, who shall be a practical farmer, to take control of the agricultural and mechanical departments, and who shall be secretary of the board.

SEC. 3692. He shall have the care and supervision of all the property appertaining to said university, and he shall be responsible for the preservation and management thereof; he shall at all times be subject to the orders of the board or to removal thereby; and he shall, from time to time, make such inventories of property, keep such books and make such reports as may be required by the board, and perform such service in the management of the farm, orchard and mechanical departments, or other labor, as may be directed by the board.

SEC. 3693. He shall give bond and security, as above required of the secretary, for the faithful discharge of all the duties required of him, and he shall receive from the state a salary to be fixed by the board, not exceeding one thousand dollars. *Provided*, that the said regent shall not receive any other or further compensation for the discharge of the duties of regent and secretary. *Act March 6, 1875, sec. 4.*

REMOVAL OF MEMBER FROM BOARD OF TRUSTEES.

SEC. 3694. The board of trustees, for any cause by them deemed sufficient, shall have power, by a majority vote taken at any meeting, to remove any member from said board. *Provided*, that no member shall be so removed without as many as five of such trustees voting for such removal; and, when any member of said board shall be so removed, the votes of the trustees shall be recorded, and the president of the board shall make a certificate showing the result of such vote and transmit the same without delay to the governor, who shall at once declare the commission which had been issued to such removed trustee vacated, and appoint and commission some competent man to fill the vacancy so occasioned.

SEC. 3695. The said board of trustees are fully empowered and authorized, either as a board or through any committee they may select or appoint, to inquire into and fully investigate any and all charges that have been or may be preferred against any trustee of said board, or any member of any committee appointed by or under the direction of said board, or any contractor, architect,

builder, employe, agent or other person acting by agreement with, or authority of, or under, said board of trustees, or any of the committees of said board, in any capacity whatever; and, for the purposes of such investigations or inquiry, said board, or any committee appointed by them, shall hold meetings in the state at such time and place as may be designated by the board, or by the committee so appointed, and the chairman of the executive committee of said board, for the time being, shall have full and ample power to issue all necessary process for summoning and compelling attendance of witnesses before such board or committee, and may impose upon all witnesses who refuse to obey such process, or to testify fully and explicitly before such board or committee in reference to any and all such matters as may be the subject of inquiry, all the pains and penalties that might or could be imposed upon such witness by the circuit court in any case if he were to fail and refuse to appear and testify before the proper circuit court of his county, in a cause or matter legally pending therein, after being duly summoned to so appear and testify therein; and said process, issued by the chairman of said executive committee, may be directed to any sheriff, coroner or constable in this state; and, if such officer fails, neglects or refuses to execute such process, he shall be subject to all the forfeitures, pains and penalties which might or could be imposed upon him for failing, neglecting or refusing to serve necessary or proper process from a circuit court in his own county; and such fine, imprisonment and penalties as can be so assessed shall be enforced and carried out upon the order of such chairman of the executive committee, which chairman shall be required to have no commission to so act, except as a member of the board, and a certificate of his election or appointment to such place by the board of trustees or the president of such board.

SEC. 3696. The material parts of all examinations and inquiries had by any committee shall be reduced to writing and laid before the board for their action; and process under this act shall run in the name of the state, and officers and witnesses shall execute and obey the same without any advanced fees or compensation, and their accounts or claims for such service or attendance, or other costs arising in such investigation, shall be presented to said board of trustees, and they shall, through their president, order certificates issued upon their treasurer for reasonable compensation. *Act April 5, 1873.*

CONVEYANCE OF LANDS.

SEC. 3697. The governor of the State of Arkansas is hereby authorized to execute a deed to the purchaser or purchasers, or their heirs or assigns, to all lands sold by the Arkansas Industrial University whenever the purchase money is paid into the treasury of said Arkansas Industrial University. *Act March 23, 1881.*

APPOINTMENT OF BENEFICIARIES.

SEC. 3698. It shall be the duty of the board of trustees to apportion the number of beneficiaries or scholars who are admitted as students in the university free of tuition among the several counties of the state, according to population, and to notify the judge of the county court of each county of the number of beneficiaries apportioned to the county at least one month prior to the annual meeting of the county court, for the purpose of levying

taxes; and it shall be the duty of the county court, at the annual meeting aforesaid, to appoint from actual residents and citizens of the county the number of beneficiaries apportioned to the county, a preference being given to those noted for diligence and proficiency in study, and the appointments so made shall be entered of record in the proceedings of said court.

SEC. 3699. Any vacancies in the number of beneficiaries during the terms of the university shall be filled by appointment by the judge of the county court. Any beneficiaries appointed, as herein prescribed, shall comply with the rules and regulations provided by the board of trustees in reference to such beneficiaries.

SEC. 3700. It shall be the duty of the judge of the county court, immediately upon receiving notification from the board of trustees as above provided, to give notice in the manner prescribed by law for the publication of legal notices of the number of beneficiaries allowed to the county, and of the time, manner and place of making appointments to the same, and no person shall be admitted to the said university as a beneficiary who has not been appointed in accordance with the provisions of this section.

BOARD OF VISITORS.

SEC. 3701. A board of visitors for said university is hereby created, to consist of six gentlemen from different portions of the state, to be selected by the governor, for their learning, integrity and business qualifications, whose duty it shall be to visit said university at least once in each year, at such time as may be designated by the governor, and as often as he may deem necessary—not exceeding once in each term.

SEC. 3702. It shall be the duty of said visitors to carefully examine into all the departments of said university and fully report thereon to the governor, and through him to the general assembly, and suggest such changes, make such recommendations and petition for such legislation as the interests of the university may require.

SEC. 3703. Any three of said board may form a quorum, and, in the discharge of their duties, they, or any committee they may appoint of their own number, are fully authorized to call for and examine all books, papers, vouchers and reports in any manner appertaining to any department in said university, and they may examine, on oath, any member of the board of trustees or faculty, any student or employe, or other person, in reference to the expenditure of moneys, the management of the university, its effects, or any other matter or thing relating thereto.

SEC. 3704. Said visitors may elect their own chairman and appoint of their number such committees as they may deem proper, and their chairman is authorized to issue subpoenas and administer oaths, and they and each member thereof shall be allowed during all business hours to visit any and all class and other rooms, hear recitations and observe the mode and efficiency of instruction and the discipline maintained in the different departments.

SEC. 3705. Upon the certificate of the respective visitors, approved by the governor, the state shall pay all the necessary expense of the visitors incurred in the discharge of their duties herein prescribed. *Act March 6, 1875, secs. 5 and 7.*

AN ACT TO PREVENT SELLING OR GIVING AWAY SPIRITUOUS, VINOUS OR MALT LIQUORS WITHIN THREE MILES OF THE ARKANSAS INDUSTRIAL UNIVERSITY (*).

SEC. 3706. It shall be unlawful for any person to sell or give away any spirituous, vinous or malt liquors within three miles of the Arkansas Industrial University, unless the same is given or used as a medicine, according to the provisions of the act of the general assembly, approved March sixth, eighteen hundred and seventy-five (**).

SEC. 3707. No physician shall use, or prescribe for use, any alcohol, spirituous, vinous or malt liquors within the limits aforesaid, in any case, until he has first taken, subscribed and filed in the clerk's office the oath required by said act, and when he does use or prescribe any such liquors, he shall state, in writing, the disease under which he finds or believes the patient to be laboring, and the amount and kind of liquor he, as such physician, believes necessary for the good of the patient in the disease under which he is suffering; and no physician shall use or prescribe any of the liquors above named, for any diseased person, unless he has been first regularly employed as a physician to examine and treat such person because of some disease with which he is affected.

SEC. 3708. Any physician found violating any of the provisions of this act shall be deemed guilty of perjury, and shall be punished for the same as now prescribed by law.

SEC. 3709. Every person in any manner interested in the sale of any of the liquors mentioned in sections 3706 and 3707, or in the proceeds of such sales, or who shall suffer the same to be sold or given away in any house, room, cellar or other apartment owned or controlled by him within the limits aforesaid, shall be deemed guilty of a violation of this law.

SEC. 3710. If any person shall file with the mayor of the Town of Fayetteville, or any justice of the peace of Washington County, an affidavit stating that the affiant has reason to believe, and does believe, that some person or persons, by the affiant named, has within one year sold or given away, or in some way been interested in the sale of, some such liquors as are named in this act within three miles of the Arkansas Industrial University, it shall be the duty of such mayor or justice of the peace to issue his warrant for the arrest of the

(*) Although this statute is local in its application, the object of its enactment is presumed to be of such general interest as to justify its insertion in this connection.

(**) On the day this act was approved, the act of March 6, 1875, referred to in sections 3706 and 3707, was expressly repealed by section 4 of an act entitled: "An act to protect the people of Arkansas against the clandestine sale of intoxicating liquors." See *Acts of 1883, page 300*. The act thus repealed is as follows:

SECTION 1. It shall be unlawful for any person to sell or give away vinous or ardent spirits within three miles of the Arkansas Industrial University, except the same be for medicinal purposes, as hereinafter provided.

SEC. 2. No person shall sell or give away any vinous or ardent spirits within three miles of said university, unless he be a regular practicing physician, and not until he has signed and sworn to an affidavit before the county clerk of Washington County, and shall have had the same duly recorded, which affidavit shall be in the following form: I, ———, do solemnly swear that I am a regular practicing physician; that I will not sell or give away any vinous or ardent spirits to any one unless it be for medicinal purposes, and believe the kind and quantity will be beneficial in the treatment of the disease under which the patient is suffering.

SEC. 3. No one shall be excused from the penalty of this act who may, contrary to its provisions, sell, or cause to be sold, intoxicating drink, by reason of its being put up as bitters, mixed with drugs or vended as a medicine, except as provided in the foregoing sections.

SEC. 4. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and for each offense shall be fined not less than ten nor more than two hundred dollars.

Approved March 6, 1875.

See art. V, sec. 23, Const.

person or persons named in such affidavit, which may be directed to the marshal of the town, the constable of the township in which said university is situate, or to the sheriff of Washington County, any one of whom shall be bound to execute the same by arresting the party charged and bringing him forthwith before such mayor or justice of the peace.

SEC. 3711. Said mayor or justice of the peace shall issue subpoenas for such witnesses as may be named to him by the person making the affidavit, and for such others as he may, from advice or otherwise, believe to be material, and he shall compel such witnesses to appear before him, and hear and determine said cause as other criminal charges within his jurisdiction; and no bond for costs shall be required of the person filing the affidavit, or any one else, in any prosecution under the provisions of this act, nor shall any prosecutor be liable for costs.

SEC. 3712. If any person shall file an affidavit with such officer as is named in the last preceding section, that he has reason to believe, and does believe, that some such liquors as are named in this act are being sold or given away, or are being kept for sale, in some house, room or other place within said distance of three miles of the Arkansas Industrial University by some person who has no license whatever to sell such liquors, it shall be the duty of such mayor or justice of the peace to issue his warrant to such officer as is named in the last preceding section, commanding him forthwith to search all such buildings, rooms or other places as may be designated for such liquors as are named in this act, and to seize and take the same into his custody, and to hold the same, and report to the officer who issued the writ all persons found in possession of such liquors or claiming the same; and, upon his report, the said officer shall issue his warrant for the arrest of the person owning or in possession of such liquors, and for all such witnesses as may be named by the person making the affidavit or otherwise believed to be material, and proceed to try the parties so arrested. If it be shown that such liquors have been sold recently before the arrest in the room or place where the liquors were found, it shall be *prima facie* evidence of the guilt of the party claiming the liquor or found in possession thereof.

SEC. 3713. The officer attempting to execute any writ or process under the provisions of this act is authorized to enter any building, room or other place described, by force and by breaking down doors or other obstructions, if need be to a direct and immediate admittance into any such apartment or place, and the liquors seized shall be subject to a lien in behalf of the state for the payment of any fine that may be assessed, and, if the defendant is discharged or the fine paid, the liquor shall be returned to the owner upon his application for the same.

SEC. 3714. If any mayor, justice of the peace, constable, sheriff or other officer shall fail, neglect or refuse or delay beyond a necessary amount of time to execute any process herein named, or to issue any writ and hear and determine any cause herein provided for, such officer shall be subject to indictment and punishment for a violation of this law.

SEC. 3715. If any physician, officer or any other person shall be convicted of a violation of any of the provisions of this act, he shall be fined not less than two hundred dollars nor more than five hundred dollars, and shall be committed to prison until said fine and costs of prosecution are paid or be dis-

charged as now provided by law, and all persons violating any of the provisions of this act shall be indictable by the grand jury, if they have not previously been tried by a mayor or justice of the peace.

SEC. 3716. This act shall not repeal any former law not inconsistent with the provisions hereof. *Act March 30, 1883.*

BRANCH NORMAL COLLEGE.

SEC. 3717. The board of trustees of the Arkansas Industrial University are authorized to take into consideration the interests of the state, and especially the convenience and well-being of the poorer classes, and to select a suitable site, and locate thereon a branch normal college, which location, owing to the principal college being located in the north-western portion of the state, shall be made south-east or east, or south of the County of Pulaski.

SEC. 3718. When said branch normal college shall be located, organized and put in operation, it shall be under the care and management of the board of trustees of the Arkansas Industrial University; and said branch college shall, in all things, be governed by the same rules and regulations as said principal college, and pupils shall be admitted into it in like numbers and upon the same conditions, and with like qualifications and recommendations, as they are or shall be admitted into said principal college; and it shall be the duty of said board of trustees, and they are hereby required, to furnish said branch college with professors and teachers, and other necessary employes, equal in number, attainments and other desirable qualifications to those furnished and employed in said principal normal college, now organized as a department in said university; and they shall prescribe the same books, the same course of study, like training and proficiency as may be directed, adopted and required in said principal college; and they shall confer upon graduates thereof like honors, commendations and degrees to those had or given in said principal normal college.

SEC. 3719. All property purchased, bequeathed, donated or otherwise obtained for the purposes or uses of this branch college shall be received and conveyed as prescribed in the act to which this is supplemental, and be forever held and appropriated for the uses, purposes and benefits of this branch college.

SEC. 3720. The said board of trustees are authorized, by themselves or through any committee they may appoint, to receive aid in money, property or other valuable effects, for the benefit of said institution, from any and all individuals, towns or other corporations, and all gifts, devises and donations that can be had to secure the location or to aid in erecting or maintaining said branch college. They are authorized to purchase such property and cause such buildings to be erected thereon as they may deem best, consistent with the amount of means appropriated or otherwise obtained for the use of this branch college (*).

(*) The trustees of the Arkansas Industrial University having purchased twenty acres of land adjacent to the City of Pine Bluff, on which to erect a building for the branch normal college provided for by sections 3717-3721, the general assembly, by an act approved Feb. 23, 1881, appropriated the sum of ten thousand dollars for the purpose of erecting and furnishing such building. The act directs the trustees to have plans and specifications for said building prepared, and to let the contract for its erection to the lowest bidder who will give bond, etc. As no other provisions are found in the act, this reference to it is thought to be sufficient.

SEC. 3721. All the provisions of the act to which this is a supplement for the government of the board of trustees and the management of the university, not inconsistent with this supplement, shall apply and be observed in the organization, government and maintenance of this branch college. The money appropriated to carry out the objects of this act shall be subject, at all times, to the order and control of said board, to be drawn from the treasurer of the state upon their order. The treasurer shall receive from them all funds they may, at any time, wish to deposit, and return the same, or any part thereof, in such funds as they may so deposit, upon the order of the board and the certificate of its president; and said board of trustees shall, as soon as practicable, proceed to the erection of buildings and the organization of said branch college. *Act April 25, 1873.*

MEDICAL DEPARTMENT.

SEC. 3722. All acts of the board of trustees of the Arkansas Industrial University looking to the establishment of a medical department thereof, located in the City of Little Rock, are ratified, approved and confirmed, and said medical department is in all things legalized.

SEC. 3723. The control of said medical department, in all things not involving title to property heretofore purchased, and such additions as may hereafter be made thereto, shall be vested in two competent physicians, living in or near said city, and a dean of the faculty, who shall together form an executive committee, with power to take charge of all the interests of the said department for the purposes of medical education and the advancement of medical science.

SEC. 3724. The members of said executive committee, as above named, shall be appointed by the governor, by and with the advice and consent of the senate; and they shall hold their offices for the term of four years, and until their successors are appointed and qualified.

SEC. 3725. In case of a vacancy on said board, it shall be filled by the governor, and, in case the general assembly shall not be in session at the time of such appointment, the person so appointed shall hold his office subject to the confirmation of the senate when it shall next reassemble.

SEC. 3726. Said executive committee shall annually, in the month of March, make a report to the trustees of the university of all its proceedings during the past year. *Act March 11, 1881.*

CHAPTER LXXXI.

INJUNCTION (a).

SECTION

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SECTION 3727. The writ of injunction is abolished.

SEC. 3728. An injunction is a command to refrain from a particular act.

(a) The issuing of an injunction is not an act ministerial in its character only, but one of judicial discretion, and *mandamus* never lies to control that discretion. *McMillen v. Smith*, 26—613; *Hayes, ex parte, Ib.*, 510; *Batesville & Brinkley Railroad, ex parte*, 39—82.

A party can not enjoin an act the commission of which does not affect his private interests. *Jones v. Mayor and Aldermen of the City of Little Rock*, 25—301.

Courts of equity will not enjoin the proceedings of the officers of a county, and vacate its organization, where such organization does not seriously interfere with some individual private right; *quo warranto* is the proper remedy. *Henry v. Steele, Judge*, 28—455.

The execution of a writ of possession under a void judgment in ejectment will be enjoined. *Stewart v. Pace & Lavender*, 30—594.

The execution of a judgment rendered without notice to the defendant, actual or constructive, will be enjoined. *Ryan & Co. v. Boyd*, 33—778.

And the defendant need not show that he had a good defense to the action. *Ib.*

A party seeking to enjoin proceedings at law must suffer judgment to go against him, and proceed to enjoin the enforcement of the judgment. *Earle's admx. v. Hale's admr.*, 31—173; *Hodges, ex parte*, 24—197.

As to when equity will relieve against a judgment at law by injunction, see *Gibson's admr. v. Armstrong*, 32—438; *Barney v. Cain*, 37—127; *Carnall v. Looper*, 35—107, and cases cited; *Clopton v. Carloss*, 42—560.

A party to an execution illegally issued has a plain and complete remedy at law, and can not apply to

SEC. 3729. It may be the final judgment in an action, or may be allowed as a provisional remedy, and where so allowed it shall be by order.

SEC. 3730. Where it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act which could produce great or irreparable injury to the plaintiff, or where, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act, in violation of the plaintiff's rights, respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute. *Civil Code, secs. 293, 294.*

SEC. 3731. The judge of the circuit court may grant injunctions and restraining orders in all cases of illegal or unauthorized taxes and assessments by county, city or other local tribunals, boards or officers (b). *Ib., sec. 296, as amended 1873.*

SEC. 3732. A provisional remedy may be granted by the judge of the court in which the action is brought, or by any circuit judge. *Ib., sec. 791, as amended 1873.*

SEC. 3733. In the absence of the circuit judge from the county, the county judge of any county shall have power to issue orders for injunctions and other provisional writs in their counties, returnable to the court having juris-

chancery for an injunction against it. But one who is not a party to an execution illegally levied on his land may apply to chancery to enjoin the sale. *King v. Clay, 34—291.*

Where the court would set aside a deed, if made, as a cloud upon title, it will interpose to prevent the sale that would result in making such deed. *Taliaferro v. Barnett, 37—511.*

The sale of chattels under execution will not be enjoined, unless some damage will result to the plaintiff not fully remediable at law. *Stillwell v. Oliver, 35—184; Jacks & Co. v. Bigham, 36—481.*

An injunction will not be granted to stay proceedings in any criminal matters, nor in any case not strictly of a civil nature. *Portis v. Fall, 34—375; Medical and Surgical Institute v. City of Hot Springs, Ib., 559.*

A city will not be enjoined from prosecutions for violations of its ordinances. *Taylor, Cleveland & Co. v. City of Pine Bluff, 34—603; Waters Pierce Oil Company v. City of Little Rock, 39—412.*

The collection of the purchase money can not be enjoined by a purchaser who has full knowledge of all the surroundings and the defects in the title. *Johnson v. Walker, 25—196.*

As to when injunction will be granted: To prevent the commission or continuance of a trespass upon land, see *Terry v. Rosell, 32—478; Ellsworth v. Hale, 33—633.* To prevent the creation or continuance of a nuisance, *Ellsworth v. Hale, supra; Draper v. Mackey, 35—497; Wellborn v. Davies, 40—83; Ward v. Little Rock, 41—526.* To prevent the removal of mortgaged property, *Valentine v. Washington, 33—795.* To restrain a municipal corporation and its officers from making an unauthorized appropriation of the corporate funds, *Town of Jacksonport v. Watson, 33—704.* To restrain the collection of illegal municipal exactions, *Taylor, Cleveland & Co. v. City of Pine Bluff, 34—603.* To prevent removal of a building by a police officer, under an order of the town council, *McKibben v. Ft. Smith, 35—352.* To restrain a railroad corporation from applying the funds of the company in building the road on a line different from that designated in the charter, *M. & R. R. R. Co. v. Gaster, 24—96; M. & R. R. R. Co. v. Cross, 20—443.* To prevent the clerk from entering on the tax books an assessment which has been illegally altered, *Wiley v. Flournoy and Rice, 30—609.* To prevent the clerk from making certificate of lands forfeited to the state, *Worthen v. Badgett, 32—496.* To restrain collection of tax for county building, *Ib.* To prevent sheriff from distraining and selling property for non-payment of a license tax, *Waters Pierce Oil Company v. City of Little Rock, 39—412.* To prevent a multiplicity of suits, *Ellsworth v. Hale, 33—633.* Against individuals assuming to act in behalf of the state and as state officers, *Crawford, auditor, v. Carson, 35—565.* To restrain collection of school tax illegally levied, *Cole v. Blackwell, 38—271.*

As to when a demurrer will lie to a bill for an injunction, see *Murphy v. Harbison, 29—340; Portis v. Fall, 34—375.*

A judgment or decree of the supreme court may be enjoined by an inferior court for matters arising after the judgment or decree of the appellate court, and which would render it inequitable to carry it into execution. *Jacks v. Adair, 33—161.*

As to when a mortgagee may enjoin the collection of taxes on the mortgaged land, see *Moore v. City of Little Rock, 42—66.*

For decisions prior to 24 Ark., see *Rose's Digest, p. 418, title "Injunctions."*

(b) See *Greedup v. Franklin County, 30—101; Oliver v. Memphis & L. R. R. Co., Ib., 128; also note (a) ante.*

diction. *Provided*, each party may have such order reviewed by any superior judge in vacation, when notice of said application shall be given at least ten days before the same is made (c). *Act March 5, 1875, sec. 2.*

SEC. 3734. The injunction may be granted at the commencement of the action, or at any time before judgment, by the court, or the judge thereof, or by any circuit judge, where it appears by the complaint that the plaintiff is entitled thereto; and, during a litigation, it may be granted by the court, or by the judge thereof, or by any circuit judge, where it satisfactorily appears by affidavits that sufficient grounds exist therefor. *Ib., sec. 295, as amended 1871, and as modified by sec. 791, as amended 1873.*

SEC. 3735. All injunctions granted before final judgment shall be subject to the further order of the court. *Ib., sec. 297.*

SEC. 3736. The court or judge to whom an application for an injunction is made may direct a reasonable notice to be given to the party against whom the injunction is asked to attend and show cause against it at a specified time and place, and may, in the meantime, restrain such party.

SEC. 3737. An injunction shall not be granted against a defendant who has answered, unless he has had notice of the application therefor.

SEC. 3738. An injunction to stop the general and ordinary business of a corporation, or the operation of a turnpike, railroad or canal company, or of a municipal corporation, or of the trustees of a town, or any building, erection or other work, or to restrain a nuisance, or the unlawful issue or circulation of small notes or bills, can only be granted upon reasonable notice of the time and place of the application therefor to the party enjoined.

SEC. 3739. On the hearing of an application for an injunction of which notice has been given, each party may read affidavits (d).

INJUNCTION BONDS.

SEC. 3740. In every case the court or judge granting an injunction shall specify in the order therefor an amount for which the party obtaining it shall give security in a bond to the party enjoined, before the injunction shall become effectual; which amount shall be sufficient to cover all the probable damages and costs that may be occasioned by the injunction.

SEC. 3741. The court or judge may prescribe the effect of the bond, so as to secure to the party enjoined the damages to which he may become entitled, if it is finally decided that the injunction ought not to have been granted.

SEC. 3742. Where the injunction is to stay proceedings upon a judgment or final order for money, the amount for which security is required shall be sufficient to cover, with other damages, the sum enjoined, with five years' interest thereon.

SEC. 3743. When the injunction is to stay proceedings upon a judgment for property, the amount specified in the order shall be sufficient to cover also the rent, hire or value of the use thereof for two years; and, in case of personal property, its value likewise.

SEC. 3744. The order of injunction shall not be issued by the clerk until

(c) See art. VII, sec. 37.

(d) The act of March 23, 1881, entitled: "An act to regulate the practice in suits for injunctions," etc., has been pronounced unconstitutional. See *Batesville & Brinkley Railroad Company, ex parte*, 39—32.

the required bond has been executed in his office by one or more sufficient sureties of the party obtaining the injunction.

SEC. 3745. In all cases, unless otherwise directed by the court or judge, the bond shall be to the effect that the party giving it will pay to the party enjoined such damages as he may sustain, if it is finally decided that the injunction ought not to have been granted.

SEC. 3746. Sureties in injunction bonds shall be taken by the clerk under the same responsibilities as in other cases of sureties taken by him.

ORDER FOR AND SERVICE THEREOF.

SEC. 3747. The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be dated and signed by the clerk. Where it is issued at the commencement of the action, it shall be indorsed upon the summons, and the copy thereof delivered to the sheriff. Where it is issued during the litigation, it shall be delivered to him with as many copies thereof as there are parties enjoined. The sheriff shall forthwith serve it by delivering a copy to each party enjoined, and make return thereof on the order.

SEC. 3748. Where notice of the application for an injunction has been given to the party enjoined, it shall not be necessary to serve the order upon him; he is bound by the injunction as soon as the bond required of the adverse party is executed.

SEC. 3749. An injunction binds the party from the time he is informed thereof.

SEC. 3750. No injunction shall be granted to stay proceedings upon a judgment of a justice of the peace where the value of the matter in dispute does not exceed twenty dollars.

SEC. 3751. An injunction to stay proceedings on a judgment or final order of a court shall not be granted in an action brought by the party seeking the injunction in any other court than that in which the judgment or order was rendered or made. Nor shall such injunction be granted unless the party applying therefor makes affidavit that no injunction has been previously granted to stay the proceedings on such judgment or order.

SEC. 3752. No injunction shall be granted by a circuit judge after a motion therefor has been overruled by the court.

SEC. 3753. A judge refusing an application for an injunction shall, if requested by the defendant, give him a certificate thereof.

SEC. 3754. Disobedience of an injunction may be punished by the court, or by the judge thereof, or any circuit judge in vacation, as a contempt. An attachment may be issued by the court or judge, upon the production of evidence by affidavit of the breach of the injunction, against the party committing the same; and, unless he purges the contempt, if in vacation, the judge may commit him to jail until the sitting of the court, or take a bond with security for his appearance to answer for the contempt at the next term of the court, and in the meantime to obey the injunction.

SEC. 3755. The affidavits read upon an application for an injunction shall be filed with the papers of the case.

SEC. 3756. A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court

for additional security on behalf of such party, and, if it appears on such notice that the surety in the injunction bond has removed from this state, or is insufficient, the court may vacate the order of injunction, unless, in a reasonable time, sufficient security is given.

SEC. 3757. If, at the time any injunction is granted and bond executed, any execution or attachment has been levied upon the property of the party obtaining the injunction, said levy shall not be discharged by reason of said injunction, but shall remain in full force until the final decision as to the injunction, unless the party obtaining the injunction shall give bond in the form now prescribed by law.

DISSOLUTION AND MODIFICATION OF (e).

SEC. 3758. The party enjoined may, at any time, upon reasonable notice to the plaintiff, move the court, upon the plaintiff's complaint and affidavits alone, to dissolve or modify an injunction of the application for which no notice was given. *Civil Code, secs. 298-314½.*

SEC. 3759. After answer filed by the party enjoined, he may give notice to the plaintiff of a motion to be made to the court in not less than ten days thereafter, upon the whole case, to dissolve or modify the injunction. Upon such motion, each party may read depositions and other competent evidence in writing. For the purposes of such motion, the court shall not be bound to take the answer as true. *Ib., sec. 316, as amended 1873.*

SEC. 3760. The motion upon the whole case to dissolve or modify the injunction may be postponed, on the application of either party, to a subsequent day, or to the next term, where the court is satisfied that, under the circumstances of the case, the delay is proper. When delay is asked in order to obtain the testimony of a witness, it must appear by affidavit what facts the witness is expected to prove, that the affiant believes his testimony will be true, and that it could not have been obtained by due diligence.

SEC. 3761. After hearing the motion, the court or judge shall overrule the same, or dissolve or modify the injunction, according to the right of the case (f).

SEC. 3762. Only one motion to dissolve or modify an injunction upon the whole case shall be allowed.

SEC. 3763. Upon the dissolution, in whole or in part, of an injunction to stay proceedings upon a judgment or final order, the damages shall be assessed by the court, which may hear the evidence and decide in a summary way, or may, at its discretion, cause a jury to be impaneled to find the damages (g).

(e) Sections 321 and 322 of the Civil Code, which provide that an injunction dissolved or modified on motion may be reinstated by a judge of the supreme court, are omitted. They appear to be clearly inconsistent with the present constitution. See *Batesville & Brinkley Railroad Company, ex parte*, 39-82.

(f) A circuit judge has power to dissolve in vacation an injunction ordered by himself in vacation, but the defendant can have no damages on the bond. *Sanders v. Plunkett*, 40-507.

The order of a chancellor at chambers dissolving an injunction issued by him in vacation is interlocutory, and can not be quashed by the supreme court on *certiorari* nor appealed from until final judgment in the circuit court. *Ib.*; *Citizens' Bank of Louisiana v. Walker*, 26-468; *Hawley, ex parte*, 24-596; *Miller v. O'Bryan*, 36-200.

An appeal to the supreme court from an order dissolving an injunction does not revive the injunction during the pendency of the appeal. *Payne v. McCabe*, 37-318.

(g) Under this section, a court of equity may, upon dissolution of an injunction, assess the damages and render a decree therefor against the plaintiff. *Bailey v. Gibson*, 29-472.

The defendant's counsel fees are not allowed as part of his damages. *Oliphint v. Mansfield & Co.*, 36-191. See note (h) *post*.

SEC. 3764. Where money is enjoined, the damages may be any rate per cent. on the amount released by the dissolution which, in the discretion of the court, may be proper, not exceeding ten per cent (h).

SEC. 3765. Where the delivery of property has been delayed by the injunction, the value of the use, hire or rent thereof shall be assessed.

SEC. 3766. Judgment shall be rendered against the party who obtained the injunction for the damages assessed; and the assessment shall be conclusive against the surety of such party (i). *Civil Code, secs. 317-320.*

CHAPTER LXXXII.

INSANE PERSONS AND DRUNKARDS.

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SECTION 3767. Probate courts, within their respective counties, shall have power and jurisdiction to appoint, and possess a superintending control over,

(h) Sections 3763, 3764, confer a discretionary power on the circuit court to award damages in any sum not to exceed ten per cent. upon the dissolution of an injunction, which the supreme court will not assume to control. *Moore v. Granger*, 30—574. Upon the dissolution of an injunction where an execution at law upon a money judgment is enjoined, the court should remit the creditor to his judgment at law for satisfaction of the judgment and interest, and render a decree for not more than ten per cent. upon the amount enjoined for damages, and award execution thereon. It is error to render a decree for the amount of the judgment enjoined and interest added as damages. *Coblentz v. Wheeler & Wilson Manufacturing Co.*, 40—180.

(i) The assessment of damages against the plaintiff, under section 3763, is conclusive against the sureties on

guardians to take the care, custody and management of idiots, lunatics, habitual drunkards and persons of unsound mind (a), who are incapable of conducting their own affairs and their estates, real and personal, and to provide for the safe-keeping of such persons, the maintenance of themselves and their families, and the education of their children, in the manner hereinafter directed.

SEC. 3768. If any person shall give information in writing to such court that any person in his county is an idiot, lunatic, or of unsound mind, and pray that an inquiry thereof be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the person so charged to be brought before such court, and inquire into the facts by a jury, if the facts be doubtful.

SEC. 3769. Whenever any sheriff, coroner or constable shall discover any person to be of unsound mind who resides in the county, it shall be his duty to make application to the court for the exercise of its jurisdiction, and thereupon the like proceedings shall be had as in the preceding section directed.

SEC. 3770. If it be found by the jury that the person so brought before the court is of unsound mind, or incapable of managing his own affairs, the court shall appoint a guardian of the person and of the estate of such insane person.

SEC. 3771. When any person shall be found to be insane, or coming within the provisions of section 3767, the costs of the proceedings shall be paid out of his estate, or, if that be insufficient, by the county.

SEC. 3772. If the person alleged to be insane shall be discharged, the costs shall be paid by the person at whose instance the proceeding was had, unless said person be an officer acting officially under the law, in which case the costs shall be paid by the county.

SEC. 3773. The court may, if just cause appear, at any time during the term at which an inquisition is had, set aside the same, and cause a new jury to be summoned to inquire into the facts; but, when two juries concur in any case, the verdict shall not be set aside.

SEC. 3774. Every such guardian shall, before entering on the duties assigned him, enter into bond to the State of Arkansas, in such sum and with such securities as the court shall approve, conditioned that he will take due and proper care of such insane person, and manage and administer his effects to the best advantage, according to law, and will faithfully do and perform all such other acts, matters and things, touching his guardianship, as may be prescribed by law, or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

SEC. 3775. The court may, at any time, require any such guardian to give a new bond or additional security, as the circumstances of the case may require; and, if any order for that purpose be not complied with within a reasonable time, to be therein mentioned, the appointment of such guardian may be revoked, and another guardian, who will give the bond and security required, appointed.

SEC. 3776. Every bond given by such guardian shall be deposited with the clerk of the court making the appointment.

the injunction bond, but the court has no jurisdiction to render a decree against them. *Bailey v. Gibson*, 29—472; *Clayton v. Martin*, 31—217. But the judgment against the sureties will not be reversed upon the appeal of the principal alone. *Daniel v. Daniel*, 39—266.

(a) See art. VII, sec. 34, Const.

SEC. 3777. Such guardian, within thirty days after his appointment, shall cause a notice thereof to be published in some newspaper printed in this state, and continue such publication three weeks successively, or otherwise publish such notice at such time and place, and in such manner, as the court shall order.

SEC. 3778. Such guardian shall take charge of the person committed to his charge, and provide for his support and maintenance, as prescribed by law.

SEC. 3779. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects, books and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

SEC. 3780. Within three months after his appointment such guardian shall make out and file in the office of the clerk of the court by which he was appointed a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, as the same shall have come to his knowledge.

SEC. 3781. Whenever any property belonging to such estate shall be discovered after the filing of such inventory, it shall be the duty of the guardian to file an additional inventory, containing a just and true account of the same, from time to time, as the same shall be discovered.

SEC. 3782. All such inventories shall be made in the presence of and attested by two credible witnesses of the neighborhood, and shall be verified by the oath of the guardian.

SEC. 3783. Such guardian is authorized and required to collect all debts due his ward, and give acquittances and discharges thereof, and adjust, settle and pay all demands due from his ward, so far as his estate and effects will extend.

SEC. 3784. The court by which any insane person is committed to guardianship may make orders for the restraint, support and safe-keeping of such person; for the management of his estate and the support and maintenance of his family and education of his children out of the proceeds of his estate; to set apart and reserve for the use of such family any property, real or personal, not necessary to be sold for the payment of debts; and to let, sell or mortgage any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

SALE, MORTGAGE AND LEASE OF REAL ESTATE.

SEC. 3785. Whenever the personal estate of any such person shall be insufficient for the discharge of his debts, the maintenance of his family or the education of his children, it shall be the duty of the guardian to apply by petition to the court by which he was appointed, praying authority to mortgage, lease or sell the whole, or so much of the real estate of his ward as shall be necessary to supply the deficiency.

SEC. 3786. The petition shall set forth the particulars, the amount of the estate, real and personal, of such person, and of the debts by him owing, accompanied by a full, true and perfect account of the guardianship of the petitioner, showing the application of the effects that have come to his hands.

SEC. 3787. If it appear to the court, upon examination of the matter, that

the personal effects are insufficient for the purpose above mentioned, and that the effects have been applied as far as the circumstances of the case render proper, the court may make an order directing the mortgage, lease or sale of the whole or such part of the real estate as may be necessary.

SEC. 3788. The court making such order shall direct the time and terms of sale, mortgage or lease of such estate, and the manner in which the proceeds shall be secured, and the income or produce thereof applied.

SEC. 3789. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place and terms of sale, and a description of the property to be sold, to be given in such manner as the court making the order shall direct.

SEC. 3790. Such guardian shall, at the time and place appointed for the sale thereof, sell such lands at public vendue to the highest bidder, and make report of his proceeding to the court making the order at the next term thereof.

SEC. 3791. The report shall be accompanied by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser of the property sold, or any part thereof; that the same was not purchased for his use or benefit, and that he is in no wise interested in the purchase thereof.

SEC. 3792. If the court approve the proceedings, the guardian shall execute a deed to the purchaser, reciting the order of sale, and conveying to the purchaser all the estate, right, title and interest of such person to the estate sold.

SEC. 3793. If the report be disapproved, the court may set aside the sale, and order all money paid to be refunded, and all securities given to be canceled, and may renew the order of sale as often as necessary until the proceedings are approved.

SEC. 3794. When the court shall order a lease or mortgage of any estate, no deed or instrument shall be executed for that purpose until the court shall have approved the agreement made by the guardian under such order.

SEC. 3795. Every conveyance, mortgage, lease and assurance made under the order of a probate court, pursuant to the foregoing provisions, shall be as valid and effectual as if the same had been executed by such ward in person when of sound memory and discretion. *Rev. Stat., chap. 78.*

SEC. 3796. The land of a person of unsound mind may be sold by the order of the probate court, though not necessary for the payment of his debts, or for his maintenance, where it shall appear:

First. That the person of unsound mind has a wife or children.

Second. That this unsoundness of mind is confirmed and incurable.

Third. That his estate is more than sufficient to pay his debts and maintain him.

Fourth. That the sale will be beneficial to his estate, and prospectively beneficial to his wife and children.

Fifth. That his wife and children, being made parties to the proceeding, in proper person, if of full age, or by their guardians if infants, consent to such sale as beneficial to them by their answers, which shall be sworn to by their guardians.

SEC. 3797. The land of a person of unsound mind, held jointly with another, or others, though not necessary for the payment of the debts of said

person, or for his maintenance, may be sold by order of the court of probate, where it shall appear to the court, from affidavits, depositions or other legal evidence, that the interest of such other joint owner or owners would be advanced thereby, and the interest of said person of unsound mind would not be injuriously affected thereby; and the proceeds of the sale shall be disposed of in the same manner as the proceeds of real estate of lunatics now authorized by law to be sold. *Civil Code, secs. 533, 534.*

MISCELLANEOUS PROVISIONS.

SEC. 3798. Every such guardian shall, once a year, or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with the court.

SEC. 3799. No such ward shall be held to bail, nor his body taken in execution in any penal action.

SEC. 3800. On judgment against such ward, or his guardian, as such, the execution shall be against his property only, and in no case against his guardian's estate, unless he shall have rendered himself liable thereto by false pleading or otherwise.

SEC. 3801. If the estate of any such ward shall be insufficient to pay his debts, to maintain himself and family, or educate his children, his guardian may apply to the county court by petition setting forth the particulars, and praying for an appropriation from the county treasury for the support of his ward.

SEC. 3802. The petition shall be accompanied by a true and perfect account of his guardianship, an inventory of his estate and effects, and a list of the debts due from such ward, and shall be verified by the affidavit of the petitioner.

SEC. 3803. If the county court shall be satisfied that such estate and effects are insufficient for the purpose above specified, such court may order such sum to be paid to the guardian, out of the county treasury, as shall be sufficient to provide for the support of such ward, and cause a warrant to be issued therefore accordingly.

SEC. 3804. But no allowance shall be made at any one time for a period longer than one year, nor shall such order be made at any time unless the guardian shall have duly accounted and settled with the court for the moneys and effects which shall have come to his hands for the support of his ward out of the county treasury or otherwise.

SEC. 3805. If any person shall allege in writing, verified by oath, that any person declared to be of unsound mind, or addicted to habitual drunkenness, has been restored to his right mind, or to correct, sober habits, the court in which the proceedings were had shall cause the facts to be inquired into in such manner as it may direct.

SEC. 3806. If it be found that such person has been reformed or restored to his right mind, he shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to him.

SEC. 3807. In case of the death of any such ward while under guardianship, the power of the guardian shall cease, and the estate descend and be distributed in the same manner as if such ward had been of sound mind, or correct

habits, and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his legal representative.

SEC. 3808. Probate courts shall have power to remove any such guardian at any time for neglect of duty, misconduct or mismanagement, or for disobedience to any lawful order, and appoint another in his place.

SEC. 3809. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

SEC. 3810. The probate courts respectively shall have power to control the guardian of any such ward in the management of the person and estate, and the settlements of his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery.

SEC. 3811. If any person by lunacy shall be furiously mad, or so far disordered in his mind as to endanger his own person, or the person or property of others, it shall be the duty of his guardian, or other person under whose care he may be, and who is bound to provide for his support, to confine him in some suitable place until the next term of the probate court for his county, which shall make such order for the restraint, support and safe-keeping of such person as the circumstances of the case shall require (b).

SEC. 3812. If any such person of unsound mind as in the last section is specified shall not be confined by those having charge of him, or if there be no person having such charge, any judge of a court of record, or any two justices of the peace of the county may cause such insane person to be apprehended, and may employ any person to confine him in some suitable place until the court shall make further order thereon, as in the preceding section specified.

SEC. 3813. The expenses attending such confinement shall be paid by the guardian out of the estate of the ward, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury. *Rev. Stat., chap. 78.*

INSANE PERSONS FOUND AT LARGE.

SEC. 3814. Insane persons found at large, and not in the care of some discreet person, shall be arrested by any peace officer and taken before a magistrate of the county, city or town in which the arrest is made.

SEC. 3815. Such magistrate shall make such orders as may be necessary to keep him in restraint until he can be sent, by due process of law, to the lunatic asylum; and if such insane person has not friends to whose custody or care the magistrate can commit him, he may order him to be confined in the county or city jail, and shall immediately give notice thereof to the city attorney or county judge, whose duty it shall be to take the proper proceedings for having the insane person sent to the lunatic asylum (†). *Crim. Code, secs. 383, 386.*

INSANE PAUPERS.

SEC. 3816. When there is a poor-house in the county, all insane persons shall be taken care of as other paupers, and the county court may make such

(b) See SEC. 4546.

(†) See SECS. 4547-4556.

additional compensation for taking care of insane paupers as may be deemed just. *Act Jan. 2, 1859, sec. 1.*

HOW MAINTENANCE RECOVERED BY COUNTY.

SEC. 3817. In all cases of appropriations out of the county treasury for the support and maintenance, or confinement, of any insane person, the amount thereof may be recovered by the county from any person who by law is bound to provide for the support and maintenance of such insane person, if there be any such of ability to pay the same.

SEC. 3818. The father and mother of poor, impotent or insane persons shall maintain them at their own charge, if of sufficient ability, and the children and grandchildren of poor, impotent or insane parents or grandparents shall maintain them at their own charge, if of sufficient ability. *Rev. Stat., chap. 78.*

CHAPTER LXXXIII.

INSURANCE BUREAU.

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ORGANIZATION OF BUREAU.

SECTION 3819. There is hereby established a bureau in the office of the auditor of state, to be known as "The Insurance Bureau," which shall be charged with the execution of the laws of the state in relation to insurance. *Act April 25, 1873, sec. 1.*

SEC. 3820. The auditor of state is hereby empowered to appoint and commission actuaries and examiners to issue, and, upon cause shown, to revoke licenses or permits to transact business of insurance; and, when legal cause exists, to suspend the business of any company of this state or any company of another state doing business in this state; to require free access to books and

papers belonging to any such company or companies; to summon and examine persons relative thereto, and generally to do any and all things which the insurance commissioner was by law heretofore empowered and required to do.

SEC. 3821. All persons having in their possession any books, papers, records, securities, furniture, or other appurtenances to the insurance bureau belonging, shall, on demand, deliver the same to the custody of the auditor.

SEC. 3822. The seal of the auditor's office shall be the seal of the insurance department. *Act Feb. 27, 1875, secs. 2 and 3.*

DUTIES AND FEES OF AUDITOR.

SEC. 3823. It shall be the duty of the auditor of state:

First. To see that all the laws of this state respecting insurance companies are faithfully executed; to file in his office every charter of a company now or hereafter required by law to be filed, and, upon application, to furnish a certified copy thereof.

Second. He shall, as soon as practicable, in each year, calculate, or cause to be calculated, the net value, on the thirty-first day of December of the previous year, of all the policies in force on that day of every life insurance company doing business in this state that shall fail to furnish him, as hereinafter provided, a certificate of the insurance commissioner of the state by whose authority the company was organized, or in which it may elect to have its policies valued in case the company is chartered by the government of the United States, giving the net value of all policies in force in the company on the thirty-first day of December of the preceding year; which calculation of the net value of each policy shall be based upon the American experience table of mortality, and four and one-half per cent. interest per annum; and the net value of a policy at any time shall be taken to be the single net premium which will at any time effect the insurance, less the value at that time of the future net premiums, called for by the table of mortality and rate of interest designated above.

Third. In case it is found that any life insurance company doing business in this state has not on hand the net value of all its policies in force, after all other debts of the company and claims against it, exclusive of capital stock, have been provided for, it shall be the duty of the insurance commissioner to publish the fact that the then existing condition of the company is below the standard of safety established by this state, and he shall require the company at once to cease doing new business, and he shall immediately institute proceedings to determine what further shall be done in the case; and it is hereby made the duty of the auditor, after having determined as above the amount of the net value of all the policies in force, to see that the company has that amount in safe, legal securities, after all its other debts and claims against it, exclusive of capital stock, have been provided for.

Fourth. He shall accept the valuations made by the insurance commissioner of the state under whose authority a life insurance company was organized, when such valuations have been properly made on sound and recognized principles and legal basis as above. *Provided*, the company shall furnish to the auditor of this state a certificate from the insurance commissioner of such state, setting forth the value, calculated on the data designated above, of all the

policies in force in the company on the previous thirty-first day of December, and stating that, after all the other debts of the company and claims against it at that time were provided for, the company had in safe securities an amount equal to the net value of all its policies in force, and that said company is entitled to do business in its own state; and every life insurance company doing business in this state during the year for which the statement is made that fails promptly to furnish the certificate aforesaid shall be required to make full detailed lists of policies and securities to the auditor of this state, and shall be liable for all charges and expenses consequent upon not having furnished the said certificate.

Fifth. For every company doing fire insurance business in this state, he shall calculate the re-insurance reserve for unexpired fire risks, by taking fifty per centum of the premiums received on all unexpired risks that have less than one year to run, and a *pro rata* of all premiums received on risks that have more than one year to run; and, in marine and inland insurance, he shall charge all the premiums received on unexpired risks as a re-insurance reserve. *Provided*, that when the re-insurance reserve, calculated as above, is less than forty per centum of all the premiums received during the year, the re-insurance reserve in this case shall be the whole of the premiums received on all its unexpired risks.

Sixth. Having charged against a company the re-insurance reserve as above determined for fire, marine and inland insurance, and adding thereto all other debts and claims against the company, he shall, in case he finds the capital stock of the company impaired to the extent of twenty per centum, give notice to the company to make good its whole capital stock within sixty days, and, if this is not done, he shall require the company to cease to do new business within this state, and shall thereupon, in case the company is organized under the authority of this state, immediately institute legal proceedings as required in this act to determine what further shall be done in the case.

Any company receiving the aforesaid notice of the auditor to make good its whole paid-up capital stock within sixty days shall forthwith call upon its stockholders for such amounts as will make its paid-up capital equal to the minimum amount fixed by the charter of said company; and in case any stockholder of such company shall neglect or refuse to pay the amount so called for after notice personally given, or by advertisement in such time and manner as the auditor shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company, the value of such shares for which new certificates shall be issued to be ascertained under the direction of the auditor, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor to any amount sufficient to make up the original capital of the company. Whenever the capital stock of any joint stock fire or marine insurance company of this state becomes impaired, the auditor may, in his discretion, permit the said company to reduce its capital stock and the par value of its shares in proportion to the extent of impairment. *Provided*, that in fix-

ing such reduced capital, no sum exceeding twenty-five thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets. *And provided*, that no part of such assets and property shall be distributed to the stockholders. *And provided, further*, that no new business shall be done until the paid-up capital shall be equal to the amount required by law for the transaction of business.

Seventh. It shall be the duty of the auditor, after he has notified a life insurance company to cease doing new business until the net value of its policies in force is equal to that called for by the standard of safety established by the state, at once to cause a rigid examination in regard to all affairs of such company. In case it shall appear that there is no fraud, or gross incompetency, or recklessness, shown to exist in the management, he may, upon publishing the facts in the case, permit such company to continue in charge of its business for one year. *Provided*, there is, in his opinion, reason to believe that the company may eventually be able to re-establish the legal net value of all its policies in force. At the end of the year named above he may renew the permission, in case, on examination, he is satisfied that the company is likely to retrieve its affairs.

Eighth. Whenever the auditor shall have reason to believe that any insurance company of this state is insolvent or fraudulently conducted, or that its assets are not sufficient for carrying on the business of the same, or during any non-compliance with the provisions of this act, he shall communicate the fact to the attorney-general, whose duty it shall then become to apply to the supreme court or the circuit court, or, in vacation, to any of the judges thereof, for an order requiring said company to show cause why their business should not be closed; and the court or judge, as the case may be, shall thereupon hear the allegations and proofs of the respective parties, or appoint some suitable person as examiner to perform such duty and report upon the facts to said court or judge. If it appear to the satisfaction of said court or judge that such company is insolvent, or that the interests of the company so require, the said court or judge shall decree a dissolution of such corporation, and a distribution of its effects; but in case it shall appear to said court or judge that said corporation is able to comply with the provisions of this act, and that it is not insolvent, a decree shall be entered annulling the act of the auditor in the premises and authorizing such company to resume business.

Ninth. The auditor shall publish the result of his examination of the affairs of any company, whenever he deems it for the interest of the public so to do, in one or more papers of this state; suspend the entire business of any company of this state, and the business within this state of any other company during its non-compliance with any provision of this act, or whenever its assets appear to him insufficient to justify its continuance in business, by suspending or revoking the certificate granted by him; report to the attorney-general any violation of law relating to insurance companies, their officers or agents; furnish to the companies the necessary blank forms for the statements required; preserve, in a permanent form, a full record of his proceedings, and concise statement of the condition of each company or agency visited or examined; at the request of any person, and on payment of the fee, to give certified copies of any record in his office, when he deems it not prejudicial to the public interest; report annually to the legislature the receipts and expenses of this depart-

ment for the year, his official acts, the condition of companies doing business in this state, and such other information as will exhibit the affairs of this department.

Tenth. The auditor, for the purposes of examination authorized by this act, is hereby empowered, either in person or by one or more examiners by him commissioned in writing, to require free access to all books and papers within this state of any insurance company, or the agents thereof, doing business within this state; to summon and examine any person being within this state under oath, which he or any examiner may administer, relative to the affairs and condition of any company; for probable cause, to visit at its principal office, wherever it may be, any insurance company not of a state in which the substantial provisions of this act shall be enacted, and doing business in this state, for the purpose of investigating its affairs and condition, and to revoke its certificate in this state if it does not permit an examination; to revoke or modify any certificate of authority when any conditions prescribed by law for granting it no longer exist.

SEC. 3824. The auditor may employ an actuary, to make the valuation of life policies, at the compensation of not exceeding three cents for each thousand dollars of insurance, to be paid by the company for which the valuation is made. *Act April 25, 1873, secs. 5 and 6, and act Feb. 27, 1875, secs. 1 and 2.*

SEC. 3825. There shall be paid into the state treasury, by every company to which this act applies, the following fees, which shall be accounted for in the same manner as other fees of the auditor's office are by law required to be accounted for:

For filing certified copy of charter, fifteen dollars.

For filing annual statement or certificate of other state commissioner in lieu thereof, ten dollars.

For certificate of authority to transact business, two dollars.

For publication of annual statements or other publication required by the insurance laws of this state, or for official examination of companies in person or by attorney, as provided by law, the actual expenses incurred.

For every copy of any paper filed in the bureau, the sum of twenty cents per folio, and for affixing the official seal to such copy and certifying the same, one dollar. *Act Feb. 27, 1875, sec. 6, and act April 25, 1873, sec. 6.*

DUTIES OF INSURANCE COMPANIES AND AGENTS.

SEC. 3826. No insurance company shall be allowed to transact business of insurance in this state until it shall have a *bona fide* subscribed capital of not less than one hundred thousand dollars, with a paid-up capital of not less than fifty thousand dollars. *Act Feb. 27, 1875, sec. 5.*

SEC. 3827. It shall be unlawful for any person, company or corporation to negotiate or solicit within this state any contract of insurance, or to effect an insurance or insurances, or pretend to effect the same, or to receive and transmit any offer or offers of insurance, or receive or deliver a policy or policies of insurance, or in any manner to aid in the transaction of the business of insurance, without complying fully with the provisions of this act (a).

(a) A failure to comply with the act does not invalidate a policy of insurance executed by the company. *Ehrman v. Teutonia Insurance Co., 1 McCrary C. C., 123.*

SEC. 3828. Every insurance company, including individuals, partnerships, joint-stock associations and corporations, conducting any branch of insurance business in this state, must transmit to the auditor a statement of its condition and business for the year ending on the preceding thirty-first day of December, which statement shall be rendered on the first day of January following, or within sixty days thereafter, except that foreign companies shall transmit their statement of business other than that done in the United States prior to the following first day of July, which statements must be in form, and state the particulars required by the blanks prescribed by the auditor. *Act April 25, 1873, secs. 9-12.*

SEC. 3829. Every company doing insurance business in this state shall file with the auditor, at the same time with its annual statement, a sworn statement of its net receipts in this state for the year ending on the thirty-first day of December, after deducting losses and commissions from its gross receipts, and shall pay into the state treasury, on or before the first of March, a tax of two and one-half per centum on such net receipts, and such tax shall be in lieu of all other taxes—state, county or municipal—on such receipts, nor shall any city, town or municipality impose any license fee or privilege tax upon any company, or the agent of any company, for the privilege of transacting such business of insurance. *Act Feb. 27, 1875, sec. 4.*

SEC. 3830. The auditor may require, at any time, statements from any company doing business within this state, or from any of its officers or agents, on such points as he deems necessary and proper to elicit a full exhibit of its business and standing, all of which statements herein required must be verified by the signature and oath of the president or vice-president, with those of the secretary or actuary. No company having neglected to file a statement required of it within the time and manner prescribed shall do any new business after notification by the auditor while such neglect continues. And any company or association neglecting to make and transmit any statement required shall forfeit one hundred dollars for each day's neglect. *Act April 25, 1873, sec. 12.*

DUTIES AND LIABILITIES OF FOREIGN COMPANIES AND THEIR AGENTS (b).

SEC. 3831. No person shall act as agent or solicitor in this state of any insurance company of another state or foreign government, in any manner whatever relating to risks, until the provisions of this act have been complied with on the part of the company or association, and there has been granted to said company or association, by the auditor, a certificate of authority showing that the company or association is authorized to transact business in this state.

SEC. 3832. It shall be the duty of every company or association of another state, authorized to transact business in this state, to make report to the auditor in the month of January of each year, under oath of the president, secretary or agent thereof, showing the entire amount of premiums of every character or

(b) An insurance company incorporated by the laws of a state is not a citizen of such state, within the meaning of that clause of the constitution of the United States that declares that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." They are creatures of local law, and have not even an absolute right of recognition in other states, but depend for that, and for the enforcement of their contracts, upon the assent of those states, which may be given accordingly, on such terms as they please. They may impose taxes and other burdens upon them that are not imposed on home companies. *Paul v. Virginia, 8 Wall., 168.*

description received by said company or association in this state during the year or fraction of a year ending with the thirty-first day of December preceding, whether said premiums were received in money or in the form of notes, credits, or any other substitute for money, and pay into the state treasury a tax of three per centum upon said premiums, and the auditor shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the state treasury.

SEC. 3833. Companies to which certificates of authority are issued, as provided by section 3831, shall from time to time certify to the auditor the names of the agents appointed by them to solicit risks, issue policies or receive applications in this state; and no such agent shall transact business until he has procured from the auditor a certificate showing that the company has complied with the requirements of this act, and that the person named in said certificate has been duly appointed its agent. *Ib.*, secs. 10, 11.

SEC. 3834. No insurance company, not of this state, nor its agents, shall do business in this state, until it has filed with the auditor of this state a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company, served on the auditor or the party designated by him, or the agent specified by said company to receive service of process for the company, shall have the same effect as if served personally on the company within this state. And if such company should cease to maintain such agent in this state, so designated, such process may thereafter be served on the auditor; but so long as any liability of the stipulating company to any resident of this state continues, such stipulation can not be revoked or modified, except that a new one may be substituted, so as to require or dispense with service at the office of said company within this state, and that such service, according to this stipulation, shall be sufficient personal service on the company. The term "process" includes any writ, summons, subpoena or order, whereby any action, suit or proceedings shall be commenced, or which shall be issued in or upon any action, suit or proceedings (c).

SEC. 3835. Any person or persons, or corporation, receiving premiums or forwarding applications, or in any other way transacting business for any insurance company or association not of this state, without having received authority agreeably to the provisions of this act, shall forfeit and pay to the school fund of the state the sum of five hundred dollars for each month or fraction thereof during which such illegal business was transacted, and any company not of this state, doing business without authority, shall forfeit a like sum for every month or fraction thereof, and be prohibited from doing business in this state until such fines are fully paid.

COLLECTION OF TAXES AND INSTITUTION OF SUITS.

SEC. 3836. The taxes provided in this act shall, in case of non-payment, after notice from the auditor, be collected as taxes upon corporations are now collected by law. *Act April 25, 1873, secs. 13, 14, 15.*

(c) Whether the stipulation is filed or not, service on the auditor is a sufficient service on the company, the latter being estopped to deny that it had filed the required stipulation. *Ehrman v. Teutonia Ins. Co.*, 1 *McCrary C. C.*, 123.

CONSTRUCTION OF INSURANCE LAWS.

SEC. 3837. The insurance laws of this state shall be so construed as not to apply in their operation and requirements to any mutual aid society or organization in this state for the relief of members thereof in case of pecuniary loss by fire or otherwise, and for the mutual aid of the beneficiaries of such members in case of death, and which is not based upon a subscribed or paid-up capital in whole or in part, but alone upon membership dues and *pro rata* assessment upon its members in case of such loss or the death of members. *Act Nov. 30, 1875.*

CHAPTER LXXXIV.

INSPECTION OF OILS AND FLUIDS.

SECTION

3838. What oils and fluids to be inspected.
 3839. County judges may appoint inspectors; term; oath; deputies.
 3840. Standards and tests; how applied.
 3841. Oils igniting at 130° F. and upward approved; branding casks, etc.; oils igniting below 130° F. condemned.
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3843. Selling oil condemned or below standard a misdemeanor; penalty.
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 3845. Definition of manufacturer.
 3846. Fees of inspector.
 3847. Inspector shall be gauger of liquors, etc.; duties, etc.; fees; *proviso*.
 3848. Second inspection not requisite.

SECTION 3838. All oils and fluids, the product of coal, petroleum and other bituminous substances, by whatever name called, which may or can be used for illuminating purposes, manufactured in this state, or brought into it, before the same is consumed, used or sold to merchants or consumers within this state, shall be inspected by an authorized inspector of this state.

SEC. 3839. The county judges of this state may appoint an inspector in each of the counties thereof to carry out the provisions of this law. The inspector shall remain in office till removed for misconduct, negligence or incompetency, and shall take an oath to faithfully, and to the best of his ability, discharge the duties of his office. An inspector may appoint an assistant or deputy, who may perform under his direction, and for such times as he may designate, any and all the duties of an inspector under this act.

SEC. 3840. An inspector, in the performance of his duties, shall use the standard instruments in use for that purpose, and shall test all oils as follows:

First. The water cup shall have sufficient water in it to rise two-thirds up the side of the oil cup.

Second. Fill the oil cup with oil to be tested to within one-eighth of an inch of the top.

Third. Suspend the thermometer so the bulb is just under the surface of the oil.

Fourth. Use an alcohol lamp to heat the water bath, and, before placing the light under the water cup, test the oil in the oil cup by bringing a lighted taper

in contact with the surface of the oil. If it does not ignite, place the lamp under the water cup, and slowly heat the oil, not slower than 1° of the thermometer in a minute, nor faster than 2° of the thermometer in a minute, moving a lighted taper across the surface of the oil at each degree the thermometer rises, not more than three-eighths of an inch from the surface of the oil. If the oil should flash—that is, a little gas burn on the surface and go out again—remove the lamp, and as soon as the thermometer ceases to rise test the oil; should it not ignite, replace the lamp and test the oil each degree the thermometer rises till the oil ignites or permanently burns. As soon as the oil ignites or permanently burns, the degree indicated by the thermometer is the fire test of the oil. The flame moved across the oil must be a regular one, and not exceed that of an ordinary match.

SEC. 3841. All oils and fluids specified in section 3838 that ignite or burn permanently at a temperature of 130° Fahrenheit, and upward, shall be approved by the inspector, and the barrels, casks or packages containing the same shall be branded or marked by him with his name, official character and the words “standard oil;” and all oils and fluids aforesaid that ignite or permanently burn at a less temperature than 130° Fahrenheit shall be condemned by the inspector, and the barrels, casks or packages containing the same shall be branded or marked by him with his name, official character and the words “unsafe for illuminating purposes.” *Act March 21, 1881, secs. 1-4.*

SEC. 3842. If any person or persons in this state shall sell to merchants or consumers within this state any of the oils or fluids specified in section 3838 without first having the same inspected by an authorized inspector of this state, or some other state, and the barrels, casks or packages containing the same branded or marked by him, as provided in section 3841, said person or persons so offending shall be punished by a fine of twenty dollars for each barrel, cask or package of oils or fluids aforesaid so sold to merchants or consumers within this state, without the same being inspected and branded. Five per centum of the penalty recovered shall go to the inspector in lieu of his fees, and the balance to the state. *Ib., sec. 5, as amended by act March 30, 1883.*

SEC. 3843. If any person or persons in this state shall sell, or offer to sell, to be consumed or used for illuminating purposes, any of the oils or fluids specified in section 3838, that will ignite or permanently burn at a temperature less than 130° Fahrenheit, or shall sell, or offer to sell, to be consumed in this state for illuminating purposes, any of the oils and fluids aforesaid which have been condemned by an authorized inspector of this state, and the barrels, casks or packages containing the same been branded or marked by him “unsafe for illuminating purposes,” the person or persons so offending shall be guilty of a misdemeanor, and, on conviction, be punished by a fine not exceeding five hundred dollars, and the oils and fluids be forfeited and sold, and the proceeds, together with the fine, go to the state.

SEC. 3844. Any dealer in or manufacturer of the oils or fluids specified in section 3838 who shall refuse to admit an inspector or his deputy upon his premises, so far as it may be necessary for the performance of his duties, or shall obstruct an inspector or his deputies in the performance of his duties, shall, for each refusal to admit on his premises, or obstruction offered to inspection, be fined for each offense not less than twenty dollars nor exceeding fifty dollars.

SEC. 3845. The word "manufacturer," as used in this act, shall mean, besides distillation by the usual process, also any mixing of oils and fluids of different fire tests by which the fire test of the oils or fluids so mixed is changed.

SEC. 3846. The inspector shall receive as compensation for all oils or fluids aforesaid tested by him twenty-five cents a barrel, to be paid by the party for whom the services shall be rendered.

SEC. 3847. The inspector of oils and fluids shall, *ex officio*, be gauger of liquors, oils, molasses, sirups and other liquids, and, in the performance of his duties, shall use the standard instruments in use for that purpose, and he shall brand or mark all barrels or casks gauged by him with his name, official character and the capacity of the package, and shall have the following fees, to be paid by the party for whom his services shall be rendered:

For gauging whisky, oils, molasses or sirups, a barrel or cask, fifteen cents, and for a single barrel of each, twenty-five cents.

For gauging varnishes and turpentine, twenty-five cents a package.

For ullaging, separate from gauging, ten cents.

For gauging any liquid not named, same as whisky.

For proving, without gauging, ten cents a package.

For removing bungs from barrels, and replacing with new bungs, five cents for each package. *Provided*, the owner may remove and replace the bungs without any charge by the inspector.

SEC. 3848. Oils and fluids mentioned in section 3838, having been once inspected by an authorized inspector of this state, who is the inspector of a county containing a city of the first or second class, shall not be subject to inspection. *Ib.*, *secs.* 6-11.

CHAPTER LXXXV.

INSPECTION OF TIMBER.

SECTION

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 3851. His bond.
 3852. Oath and bond, where filed; suit on bond.
 3853. Inspector prohibited from purchasing public lands; penalty for making such purchase.
 3854. Inspector may divide state into districts, appoint deputies, etc.
 3855, 3856. Duties of inspector in measuring timber, etc.
 3857. Deputies to render inspector monthly accounts.
 3858. Rules for measuring logs.
 3859. Owner of timber to have his mark recorded.
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SECTION

3863. Disposition of prize logs becoming intermixed.
 3864. Marking rafted logs; penalty for failure to mark.
 3865. Inspector to prescribe written rules for deputies.
 3866. Inspector to report to legislature.
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 3870, 3871, 3872. Logs, timber, etc., unlawfully taken from state lands, how recovered.
 3873. How disposed of when recovered.
 3874. Duty of prosecuting attorneys.
 3875. Proceeds of sales, how disposed of.
 3876. Duties of sheriffs and other officers.
 3877. Criminal prosecutions; actions for damages, etc.
 3878. Certificate of secretary of state; presumptive evidence of what.
 3878a. What funds credited with proceeds of seizures, etc.

SECTION 3849. The commissioner of state lands shall be *ex officio* state timber inspector, and shall discharge the duties and receive the fees herein prescribed (†). *Act March 17, 1883, sec. 9.*

SEC. 3850. Said state timber inspector shall, before entering upon the duties of his office, take and subscribe the following oath: "I do solemnly swear that I will support the constitution of the United States and the constitution of the State of Arkansas; that I will not engage, directly or indirectly, in the purchase for my own benefit, or for the benefit of any other person, of any of the public lands so long as I remain state timber inspector for this state, and that I will faithfully, and to the best of my ability, discharge the duties of such inspector, so help me God."

SEC. 3851. He shall also execute a bond to the state in the sum of five thousand dollars, with three or more sureties, to be approved by the governor of this state, conditioned that he will faithfully perform his duties as state timber inspector, and deliver to his successor in office all bills, papers, journals, books and other effects appertaining to his office. *Ib., sec. 10.*

SEC. 3852. Such oath of office and bond shall be filed in the office of the secretary of state, and any person feeling himself aggrieved may commence an action in his own name on said bond in like manner as actions may be brought on other official bonds.

SEC. 3853. Said inspector is prohibited from purchasing any of the public lands, directly or indirectly, either in his own name or in the name of any other person in trust for him; and for every tract or parcel of land purchased in violation hereof, he shall forfeit two hundred and fifty dollars. *Ib.*

(†) Are the provisions of this act, which create the office of timber inspector, free from constitutional objection? See *art. XIX, secs. 6 and 9.*

SEC. 3854. The state timber inspector may divide the state into such districts as he may deem best, and for each district, as well as for any specific purpose, may appoint one or more deputies, for whose conduct and fidelity in the discharge of their duties as such said inspector shall be responsible upon his official bond; and said state timber inspector and his deputies shall have power and authority to administer oaths for any purpose relating to the duties of their office.

SEC. 3855. Said state timber inspector shall, in person or by deputy, at the request of any owner of logs, timber or lumber, after a scalement or measurement thereof, make a bill stating therein the number of logs, the number of feet (board measure) contained in such logs and lumber, and the number of feet, cubic, running or board measure, contained in said timber, and at whose request the same was scaled or measured, and to whom scaled or measured, a copy of which bill he shall enter upon the books of his office, to be provided by him and kept for that purpose, with the marks as they occurred upon the logs. A correct bill of the same shall be given to such owner, with a certificate thereto attached that it is a true and correct bill, which bill, so certified, shall be presumptive evidence of the facts therein contained, and of the correctness of such scalement or measurement in all courts, except in favor of the inspector or deputy inspector who made the same.

SEC. 3856. Said state timber inspector and his deputies shall, in surveying or measuring logs, make such allowance for hollow, rotten or crooked logs as would make them equal to good, sound, straight merchantable logs; and all logs that are straight and sound are to be measured at their full size, inside the bark at the small end; and all logs over twenty-four feet long, and not exceeding thirty-six feet, shall be scaled or measured as two logs, allowing such rise from the first to the second log as the same may require, or as may seem proper in the opinion of the inspector or his deputy.

SEC. 3857. Said state timber inspector shall require of each of his deputies, at the end of each month, a correct account of all of the logs, lumber or timber measured by him during the month next preceding, and he shall immediately enter such account upon the books of his office.

SEC. 3858. The Scribner rule shall be the standard rule for scaling or measuring logs in the state, but other rules may be used at the request of the owner of logs; but in all such cases the bill of the inspector shall state by what rule the logs were scaled or measured.

SEC. 3859. Any owner of logs or timbers in this state may use thereon any mark not before recorded and used by any other person, but shall leave such mark with the inspector or his deputy, and the same shall be recorded in the office of the inspector, and the inspector's books shall be at all times open for the inspection of all persons.

SEC. 3860. No person shall use any mark on any logs or timber until the same shall have been recorded by him as aforesaid; and no person shall use any mark previously recorded and used by another; and no person shall mark any prize log; and for every violation of either of said provisions, the offender shall forfeit ten dollars—one-half for the use of the person prosecuting therefor, and the other half to the State of Arkansas.

SEC. 3861. All mortgages, liens, bills of sale or other written instruments, in any way affecting the ownership of any marked logs, which shall specify

the marks placed upon said logs and when they were cut, shall be recorded in the office of the state timber inspector; and no such conveyance, lien, mortgage or transfer shall be valid, except as to the parties thereto, until the same is recorded, or until the same shall be filed with some deputy state timber inspector, who shall immediately forward such instrument to the inspector. Such filing and recording of all such instruments and papers shall have the same effect as notice as the recording of deeds and mortgages in the office of the register of deeds.

SEC. 3862. All prize logs shall be divided between the owners in each district in proportion to the number of logs owned by each person or company, respectively, in such district; and prize logs are hereby defined to mean such logs as bear no mark or marks, and all logs bearing marks not recorded or claimed within one year after any general drive.

SEC. 3863. Any person with whose logs or timber, in any waters of this state, such prize logs or timber shall become so intermixed that they can not be conveniently separated for the purpose of being floated to the market or place of manufacture, may drive all such logs or timber with which his own may be intermixed toward such market or place, when no special or different provision is made by law for driving the same, and shall be entitled to reasonable compensation from the owner for driving such logs or timber, to be recovered after demand therefor on said owner or agent, if known; and he shall have a prior lien thereon until thirty days after they arrive at their place of destination, to enable him to attach the same; and if the owner thereof can not be ascertained, the property shall be liable according to law, and enough be disposed of to defray the expenses thereof. *Ib.*, *secs.* 11-17.

SEC. 3864. Every person rafting logs on any of the rivers of this state shall have the marks thereon on the upper side of every log when rafted, open to view and inspection to all persons interested, and every person violating this section shall forfeit one dollar for each log the mark of which shall not be so exposed—one-half to the use of the person prosecuting therefor, one-fourth to the state and the other fourth to the prosecuting attorney.

SEC. 3865. The state timber inspector shall prescribe by written rules and regulations the duties of his deputies not inconsistent with this act. *Ib.*, *secs.* 20, 21.

SEC. 3866. Said state timber inspector shall report to the legislature every two years, within ten days after the meeting thereof, the amount of logs, timber and lumber scaled or measured by him for the two years previous to the date of his report. *Ib.*, *sec.* 19.

SEC. 3867. He shall be entitled to receive the following fees for services, viz.: Five cents per thousand feet for scaling or measuring and making out survey bills for all logs he is called upon to scale or measure; twelve cents per thousand feet, running measure, for measuring square timber; ten cents per thousand feet for sawed lumber, including bills; and in all cases such fees shall be paid by the owner of the logs, timber or lumber scaled or measured. For recording each mark, fifty cents. For recording any mortgage, bill of sale or other written instrument, the same fees allowed by law to registers of deeds for recording like instruments. *Ib.*, *sec.* 18.

SEC. 3868. Any person who shall knowingly cut down, destroy or carry away any tree, timber, lumber, staves or shingles made therefrom, contrary to

sections 1659, 1660, 1661, 1662 or 1663, and any person who shall aid and abet or assist any other person in so doing, and any person who shall purchase or receive any trees, timber, lumber, staves or shingles, knowing the same to have been cut contrary to the provisions of said sections, shall be jointly and severally liable to the owner in double the value thereof, to be recovered by action at law, in the name of the state, in case the same should be cut from the lands of the state, or in the name of the corporation or person owning the land, in case the same shall be so cut from other lands; and a violation of any of said provisions shall be ground for an attachment against the property of the person who shall be guilty of violating the same, to be issued in the same manner as attachments in other civil actions.

SEC. 3869. In case the said tree or timber shall be so unlawfully cut from state lands, then no bond shall be required on the part of the state, but the attachment shall issue upon the filing of an affidavit of the state timber inspector, or deputy, or other person authorized by said timber inspector, setting forth sufficient grounds therefor, and in all other respects the proceedings upon attachments under this act shall be the same as proceedings by attachment in any other civil action.

SEC. 3870. In case the state timber inspector shall find anywhere in this state any logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral or other material unlawfully cut, dug, removed or taken from any state lands, he shall seize the same or cause the same to be seized, and shall give written notice to any person or persons who may be found in possession or control of the same of such seizure, and shall cause a complaint to be filed in some court of competent jurisdiction, charging such logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral or other material to have been unlawfully cut, dug, removed or taken from state lands, and charging the same to be the property of the state. If no person or persons shall be found in possession or control of the same, then the complaint shall state that fact.

SEC. 3871. The complaint shall be sworn to by the state timber inspector or any credible witness, and on the filing of such complaint, the clerk of the court, in case the same shall be filed in a court of record, or the justice of the peace, in case the same be filed with a justice of the peace, shall issue a summons against the person or persons so named in said complaint as defendant or defendants, commanding him or them to appear, as in other actions at law, before such court or justice, and show cause why the property mentioned in such complaint shall not be adjudged to be the property of the State of Arkansas, which summons shall be served in the same manner as a summons in any other cause, and the trial of the cause shall proceed in all respects as the trial of other civil actions.

SEC. 3872. If no person shall be found in possession of such logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral or other material, and if no person shall claim the same, or if the officer whose duty it is to serve such summons shall fail to find the parties therein named, then, upon such return of such officer, or upon the oath of the state timber inspector, or other person acting under his authority, the clerk of the court or the justice of the peace shall make out a warning order and publish the same, as is now provided by law in proceedings by attachment. Appeals

may be prosecuted in any such cause the same as in other civil actions. In case the State of Arkansas shall appeal, no bond shall be required.

SEC. 3873. If judgment shall be rendered for the state in any such action, the state timber inspector shall sell such logs, timber, lumber, staves, shingles, shingle bolts, stocks, headings, wood, bark, stone, mineral or other material at public sale, but may sell the same at private sale upon order of the court rendering such judgment, or upon order of the judge thereof, either in term time or vacation.

SEC. 3874. It shall be the duty of the prosecuting attorney of the circuit in which any suit on behalf of the state, instituted by the state timber inspector, or by his authority, under the provisions of this act, may be pending to prosecute the same on the part of the state. *Ib.*, secs. 6-8.

SEC. 3875. The proceeds of all sales from seizure and fines under this act shall be paid as follows: Where the inspector or his deputy makes the seizure upon his own information, forty per cent. of the proceeds shall be paid to the state timber inspector and ten per cent. to the prosecuting attorney, and the remaining fifty per cent. to the state treasury. Where the seizure is made on the information of some one else, twenty-five per cent. shall be paid to the inspector, fifteen per cent. to the informant, ten per cent. to the prosecuting attorney, and the remaining fifty per cent. into the state treasury. *Ib.*, sec. 18.

SEC. 3876. All sheriffs and township officers are especially charged to immediately communicate to the prosecuting attorney and state timber inspector any and all information received by them respecting the commission of any trespass or waste on any public lands, and to enter complaint against the offender before some justice of the peace.

SEC. 3877. Every prosecuting attorney, immediately upon receiving information of any such trespass upon lands in his circuit, shall prosecute the proper criminal action against such offender, and advise said state timber inspector thereof, and he shall, when required by said inspector, prosecute a civil action for damages for any such trespass, or to recover possession of any material taken from any such land.

SEC. 3878. In any criminal or civil action growing out of a trespass upon any public lands, the certificate of the secretary of state, under the great seal, that any specified piece or tract of land belongs to the state, or is mortgaged to the state, or that the state has any interest, legal or equitable, in such piece or tract of land, shall be presumptive evidence of the facts stated therein.

SEC. 3878a. All money received from the sale of logs, timber, lumber, shingles, minerals or other articles seized under the provisions of this chapter, or recovered in legal proceedings for damages done the public lands, after paying the inspector, prosecuting attorney and witnesses as hereinbefore provided, shall be paid into the state treasury, to the credit of the respective funds to which the lands belong on which such trespasses were committed, and all other money collected, as expenses, fees, penalties and damages for trespass on such lands, shall be paid into the general fund. *Ib.*, secs. 22-24.

CHAPTER LXXXVI.

JAILS AND JAILERS.

SECTION

3879. Jail to be kept in each county.
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3889. When county court or judge may direct guard to be kept; pay of guard.
 3890. When prisoner committed to jail of another county, and duty of jailer.
 3891. Sheriff to notify judge thereof.
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 3895. Fees for committal, and executing such writ.
 3896. Expenses in such case, how paid.
 3897. Sheriff imprisoned, coroner to have charge, etc.

SECTION 3879. There shall be kept, in good and sufficient condition and repair, a common jail in each county, to be located at the seat of justice of the county.

SEC. 3880. The sheriff shall have the custody, rule and charge of the jail within his county, and all prisoners committed in his county, and he may appoint a jailer, for whose conduct he shall be responsible.

SEC. 3881. It shall be the duty of the jailer to receive from constables and other officers all persons who may be apprehended by such constables, or other officers, for offenses against this state, or who shall be committed by any competent authority.

SEC. 3882. Every person who may be committed to the common jail of the county, by lawful authority, for any criminal offense or misdemeanor, if he shall be convicted thereof, shall pay the expenses in carrying him to jail, and also for his support while he remains there; and the property of such person shall be subject to the payment of such expenses.

SEC. 3883. Whenever any person committed to jail upon any criminal process, under any law of this state, shall declare on oath that he is unable to buy or procure necessary food, the sheriff or jailer shall provide such prisoner the food necessary for his support, for which he shall be allowed a reasonable compensation, to be fixed by the county court; and if from the inclemency of the season, sickness of the prisoner, or other cause, the sheriff or jailer shall be of opinion that fuel, additional clothing or bedding is necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation.

SEC. 3884. The expenses of imprisoning any prisoner committed on a criminal charge which accrue before conviction shall be paid in the same manner as the costs of prosecution are directed to be paid, and the expenses which accrue after the conviction shall be paid as directed in the law regulating criminal proceedings.

SEC. 3885. It shall be the duty of the grand jury at each term of the circuit court to visit the jail of their county, and examine into the condition

thereof, and inquire into the treatment of the prisoners, and report thereon to the court, and in their report recommend such improvements as may be necessary to put the jail in complete repair and render it secure.

SEC. 3886. It shall be the duty of the keeper of the jail in each county to receive into his custody all persons who may, from time to time, be committed to his custody under the authority of the United States, and he shall safely keep every such prisoner according to the warrant or precept of such commitment until he shall be discharged by the due course of the laws of the United States.

SEC. 3887. The keeper of every jail shall be subject to the same penalties, for any neglect or failure of duty herein, as he would be subject to by the laws of this state for the like neglect or failure in case of a prisoner committed under the authority of the laws of this state.

SEC. 3888. The United States shall pay for the use and keeping of such jails at the rate of fifty cents per month for each prisoner who shall under their authority be committed thereto, and shall also pay to the jailer such fees as he would be entitled to for like services rendered by virtue of the laws of this state during the time such prisoner shall be confined, and shall support all prisoners that may be committed for criminal offenses. *Rev. Stat., chap. 93, secs. 1-3, 5-8 and 13.*

SEC. 3889. Whenever the sheriff of any county shall be of the opinion that the jail of his county is insufficient to secure the prisoners that may be therein committed, it shall be his duty to give notice thereof to the county court, and said court, if the jail can not be immediately repaired and made safe and secure, may by an order, to be entered on its minutes, direct the sheriff to employ a guard sufficient for the guarding and safe keeping of the prisoners; but such guard shall in no instance exceed three persons. In case said insufficiency in the opinion of said sheriff shall occur in vacation of said county court, it shall be the duty of said sheriff to give notice thereof to the county judge of such county, whereupon, if said jail can not be immediately repaired and made safe and secure, said county judge may, by an order in writing, direct said sheriff to employ a guard for the purpose, and not exceeding the number, aforesaid, for such length of time as he may deem necessary, not exceeding the second day of the actual meeting of said county court at any regular, adjourned or special term thereof. *Provided*, that the said guard shall not be allowed a sum to exceed two dollars for each twenty-four hours. *Act March 10, 1877.*

SEC. 3890. The sheriff, where there is no jail in his county, or the jail of such county is insufficient, may commit any person in his custody to the nearest jail in some other county in the same circuit, and it shall be the duty of the keeper of the jail of such county to receive such person so committed, and him safely keep, subject to the order of the circuit court of the county in which such prisoner was committed.

SEC. 3891. It shall be the duty of the sheriff committing any person to another county for any criminal offense forthwith to notify the judge of the circuit court of the county in which such prisoner is to be tried of the committing of such person to the jail of such other county, and transmit to such judge at the same time the cause of the caption and detention of such person.

SEC. 3892. It shall be the duty of such judge, at least fifteen days preceding the first day of the next term of the circuit court of the county in which such person is to be tried, to issue a writ of *habeas corpus*, directed to the sheriff or keeper of the jail of the county in which such person may be committed, commanding him to have the body of such person, together with the day and cause of his caption and detention, before the circuit court of the proper county for the trial of such offense on the first day of the next term of said court.

SEC. 3893. It shall be the duty of such sheriff or jailer to deliver, or cause to be delivered, such prisoner on the day and at the place mentioned in such writ.

SEC. 3894. Any sheriff or jailer failing or neglecting to make return of such writ and have there the body of such person, according to the command of such writ, shall be deemed guilty of a contempt, and shall be liable to be attached therefor, and shall forfeit to the person or party any sum not exceeding five hundred dollars, to be recovered by the injured party by civil action founded on this act.

SEC. 3895. The sheriff shall be entitled, for committing such person and for executing such writ of *habeas corpus*, to the fees provided by law for similar services.

SEC. 3896. In all cases where a prisoner is committed from another county for a criminal offense under the provisions of this chapter, such county shall pay the expenses in the same manner as if the commitment had been in the county where the offense is committed.

SEC. 3897. The sheriff may be imprisoned in the jail of his own county, and for the time he shall be confined the coroner shall have the custody, rule, keeping and charge of the jail, and shall, by himself and his securities, be answerable for the faithful discharge of his duties in that office. *Rev. Stat., chap. 81, secs. 17-24.*

CHAPTER LXXXVII.

JOINT AND SEVERAL OBLIGATIONS AND CONTRACTS.

SECTION.

3898. Joint to survive against heirs, executors, etc., of joint debtor or obligor dying.

3899. All dying, to survive against heirs of all.

3900. To be considered joint and several.

SECTION

3901. Suit may be brought against surviving obligor and heir, etc., jointly.

3902. Creditor to have but one satisfaction.

3903. Survivorship of real and personal estate abolished.

SECTION 3898. All joint debts or obligations shall survive against the heirs, executors and administrators of such joint debtor or obligor as may die before the discharge of any such joint debt or obligation.

SEC. 3899. Where all the joint debtors or obligors shall die before the dis-

charge of a joint debt or obligation, the debt or obligation shall survive against the heirs, executors and administrators of all such joint debtors or obligors.

SEC. 3900. Joint obligations shall be construed to have the same effect as joint and several obligations, and may be sued on, and recoveries had thereon in like manner (a).

SEC. 3901. Suits may be brought against the surviving obligor and the heir, executor or administrator of the deceased obligor at the same time.

SEC. 3902. No creditor on any joint, or joint and several obligation, shall have more than one satisfaction and costs in one suit.

SEC. 3903. All survivorships of real and personal estate are forever abolished (b). *Rev. Stat., chap. 82.*

CHAPTER LXXXVIII.

JUDGMENTS AND DECREES.

SECTION

PROCEEDINGS TO REVERSE, VACATE OR MODIFY.

- 8904. Supreme court, or court in which the judgment is rendered, may reverse or modify it.
- 8905. The supreme court, for errors appearing in the record.
- 8906. Proceedings by appeal.
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- 8916. When and to what extent judgments of the supreme court become liens.
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- 8919. Lands may be sold under junior judgment, subject to prior liens.
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SCIRE FACIAS TO REVIVE.

- 8921, 8922, 8923, 8924, 8925, 8926. Judgment may be revived by *scire facias* before expiration of lien; proceedings in such case.

REVIVAL AGAINST PERSONAL REPRESENTATIVES, ETC., BY ACTION.

- 8927. Judgments may be revived by action at law.

DEATH OF ONE OR MORE PLAINTIFFS, JUDGMENT SURVIVES—EXECUTION MAY ISSUE.

- 8928, 8929. Death of one or more plaintiffs, judgment survives; execution may issue.

DEATH OF ONE OR MORE DEFENDANTS, JUDGMENT SURVIVES—EXECUTION MAY ISSUE.

- 8930. If one or two or more judgment defendants die, judgment survives; against whom.
- 8931. Execution may issue against survivor.
- 8932. Judgment may be revived against representative of deceased defendant.
- 8933. Execution may issue against survivor and representative of deceased defendant, when.
- 8934. Judgments may be revived by or against an administrator *de bonis non*.

(a) Where two or more persons are jointly bound by contract, action may be brought against all or any of them, and if any of them be dead, action may be brought against any or all of the survivors, with the personal representatives of the decedents, etc. SEC. 4944. And the rule is the same as to persons severally liable upon the same contract. SEC. 4943.

(b) This section has not the effect to abolish survivorships in *choses in action*, and upon the death of one of several payees, the survivors may sue upon the note, or make an assignment of it. *Sessions v. Peay*, 19—267.

SECTION

LIENS UPON.

3935, 3936, 3937, 3938, 3939. Officers and attorneys have lien on judgment, for what, how enforced.

ENTRY OF SATISFACTION.

3940. Clerk to enter, when, how.
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DECREE MAY OPERATE TO PASS TITLE.

3953. Court may by decree pass title to property without requiring conveyance to be made; power to enforce decree.
 3954. An unconditional decree for a conveyance to operate as a conveyance.

DECREES FOR THE CONVEYANCE OF REAL ESTATE TO BE RECORDED.

3955. Decrees for the conveyance of real estate to be recorded; if not done, to be void as to subsequent purchasers without notice.
 3956. "Real estate" defined.

PROCEEDINGS TO REVERSE, VACATE OR MODIFY.

SEC. 3904. A judgment rendered, or final order made in the circuit court, may be reversed, vacated or modified, either by the supreme court, or by the court in which the judgment was rendered or order made (a).

SEC. 3905. A judgment or final order may be reversed or modified by the supreme court, for errors appearing in the record.

SEC. 3906. The proceedings to obtain such reversal or modification shall be by appeal, prosecuted as prescribed by law.

SEC. 3907. A misprision of the clerk shall not be a ground for an appeal, until the same has been presented and acted upon in the circuit court. *Civil Code, secs. 566-569.*

SEC. 3908. Rendering judgment before the time fixed for filing the answer expires shall be deemed a clerical misprision. *Ib., sec. 570, as amended by act March 22, 1881, sec. 3.*

SEC. 3909. The court in which a judgment or final order has been rendered or made shall have power, after the expiration of the term, to vacate or modify such judgment or order (b):

First. By granting a new trial for the cause, and in the manner prescribed in section 5155.

Second. By a new trial granted in proceedings against defendants constructively summoned.

Third. For misprisions of the clerk (c).

Fourth. For fraud practiced by the successful party in the obtaining of the judgment or order (d).

Fifth. For erroneous proceedings against an infant, married woman or per-

(a) Unless corrected by appeal or new trial, a judgment is conclusive as to all matters that could have been litigated in the case. *Morris v. Curry*, 41-75. A judgment can not be impeached collaterally. *Chollar v. Temple*, 39-238; *King v. Clay*, 34-291; *Denton v. Roddy*, *Ib.*, 642.

A decree binds only parties and privies. *King v. Clay*, *supra*.

(b) After the expiration of the term, the judgment can be set aside only in the way and for the reasons specified in this section, or by bill of review in equity. *Turner v. Vaughan*, 33-454. A case where a motion for a new trial was not disposed of during the term, owing to the illness of the judge, is not within this section. *Leigh v. Armor*, 35-123.

(c) The court will, of its own motion, correct obvious errors in the entering of judgments, even after the expiration of the term. *Portis v. Talbot*, 33-218. It is erroneous to amend a judgment without notice. *King v. Clay*, 34-291. If the clerk omit to include the sureties on the appeal bond in the judgment, the court may, at a subsequent term, enter judgment against them without notice. *Freeman v. Mears*, 35-278.

(d) A party can not avail himself of a fraudulent judgment obtained by his agent without his knowledge or consent. *Webster v. Diamond*, 36-532.

son of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings.

Sixth. For the death of one of the parties before the judgment (e) in the action.

Seventh. For unavoidable casualty or misfortune preventing the party from appearing or defending.

Eighth. For errors in a judgment, shown by an infant in twelve months after arriving at full age, as prescribed in section 5184.

SEC. 3910. The proceedings to correct misprisions of the clerk shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial can be made only in the first three days of the succeeding term.

SEC. 3911. The proceedings to vacate or modify the judgment or order on the grounds mentioned in the fourth, fifth, sixth, seventh and eighth subdivisions of section 3909 shall be by complaint, verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On the complaint, a summons shall issue and be served, and other proceedings had as in an action by proceedings at law.

SEC. 3912. A judgment shall not be vacated on motion or complaint until it is adjudged that there is a valid defense to the action in which the judgment is rendered, or, if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

SEC. 3913. The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action.

SEC. 3914. The party seeking to vacate or modify a judgment or order may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court, or any officer authorized to grant injunctions, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified (f).

SEC. 3915. Where the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defense to the action is shown; and the court shall make such orders concerning the execution to be issued on the judgment, or on any stay or forthcoming bond taken under it, as shall give to the defendant the same rights of delay that he would have had if the judgment had been rendered at the proper time. *Civil Code, secs. 570-577.*

LIEN OF.

SEC. 3916. Judgment and decrees of the supreme court shall, upon the filing of a transcript thereof in the circuit court of the county in which the suit

(e) See SECS. 5146, 5147.

(f) A judgment or decree of the supreme court may be enjoined by the circuit court when matters arising subsequent to the judgment or decree render it inequitable that it should be enforced. *Jacks v. Adair*, 32—161. A judgment will not be enjoined unless a meritorious defense be shown. *Gibson v. Armstrong*, 32—438. See chap. 81, note (a).

originated on which judgment or decree is entered, be a lien on the real estate of the person against whom such judgment or decree is rendered situate in such county from the filing such transcript.

SEC. 3917. Judgment and decrees rendered in the circuit court shall be a lien on the real estate of the person against whom they are rendered situate in the county for which the court is held (g).

SEC. 3918. Liens shall commence on the day of the rendition of the judgment, and shall continue for three years (h), subject to be revived as hereinafter provided.

SEC. 3919. A sale of lands under a junior judgment shall pass the title of the defendant, subject to the lien of all prior judgments and decrees then in force.

SEC. 3920. The money arising from such sale shall be applied to the payment of the judgment under which it may have been made (i).

SCIRE FACIAS TO REVIVE.

SEC. 3921. The plaintiff or his legal representative may, at any time before the expiration of the lien on any judgment, sue out a *scire facias* to revive the same (j).

SEC. 3922. The *scire facias* shall be served on the defendant or his legal representatives, terre-tenants or other person occupying the land, and may be directed to and served in any county in this state.

SEC. 3923. If the defendant can not be found, the court shall make an order briefly setting forth the nature of the case, and requiring all persons interested to appear and show cause why such judgment or decree should not be revived, and the lien continued, on or before the second day of the next term of said court.

SEC. 3924. A copy of such order shall be put up at the court-house door of the county in which such judgment or decree may have been rendered, four

(g) A judgment is a lien on a reversion in real estate. A judgment becomes a lien on after-acquired lands. *Trustees R. E. Bank v. Watson & Hubbard*, 13—74.

A partner has such an interest in partnership lands as is subject to the lien of a judgment against him. *Jones, McDowell & Co. v. Fletcher*, 42—422.

(h) The lien of a judgment upon land is paramount to that of a subsequent mortgage. The lien of a judgment in the federal court is, by analogy to the state laws, co-extensive with the territorial jurisdiction of the court. A levy upon land within three years from the date of the judgment will not continue the lien of the judgment beyond the three years. *Trapnall v. Richardson, Waterman & Co.*, 13—543.

Mere delay to sue out an execution during the time prescribed by law for the continuance of the judgment lien would not, of itself, be sufficient to displace the lien; nor would the issuance and return of an execution without action, by order of the plaintiff, discharge the lien, or postpone it, in favor of a subsequent judgment lien. *Shall v. Biscoe*, 18—142. The lien of a judgment is subject to all valid liens on the property, whether recorded or not. *Apperson v. Burgett*, 33—328. Notice of prior incumbrances may be given at any time before the sale under execution, and will bind the purchaser. *Id.* The lien is superior to that of a subsequently recorded mortgage. *Pindall v. Trevor*, 30—249.

(i) See *Hanauer & Co. v. Casey*, 26—352.

(j) A *scire facias* may be issued to revive a judgment after its lien has expired. A *scire facias* to revive a judgment may be issued from the county where the judgment was recovered to any county in the state. *Fowler v. Thurmond*, 13—259. A *scire facias* is in the nature of a writ of summons. *Alexander v. Steele, Ib.*, 392. See *Trapnall v. Richardson, Waterman & Co.*, *Ib.*, 543; *Bolinger v. Fowler*, 14—27.

The writ of *scire facias* occupies the place of both declaration and writ of summons. *Trapnall v. Terry*, 27—70. The proceeding must be against the executor or administrator, not against the heir. *Powell v. Macon*, 40—541. The provisions for reviving judgments have no application to the judgments of the probate court. *Rose v. Thompson*, 36—254.

weeks before the commencement of the term of the court at which the parties are required to appear.

SEC. 3925. If, upon service or publication of the *scire facias* as required in the preceding section, the defendant, or any other person interested, do not appear and show cause why such judgment or decree shall not be revived, the same shall be revived, and the lien continued for another period of three years, and so on from time to time, as often as may be necessary.

SEC. 3926. If a *scire facias* be sued out before the termination of the lien of any judgment or decree, the lien of the judgment revived shall have relation to the day on which the *scire facias* issued; but if the lien of any judgment or decree shall have expired before suing out the *scire facias*, the judgment of revival shall only be a lien from the time of the rendition of such judgment (k). *Rev. Stat., chap. 84, secs. 1-11.*

REVIVAL AGAINST PERSONAL REPRESENTATIVES, ETC., BY ACTION.

SEC. 3927. A judgment may be revived against the personal representatives, heirs and devisees, or either of them, of a deceased defendant, by an action prosecuted by proceedings at law without verification of the complaint (*). *Civil Code, sec. 442.*

DEATH OF ONE OR MORE PLAINTIFFS, JUDGMENT SURVIVES—EXECUTION MAY ISSUE.

SEC. 3928. If one or more plaintiffs in a judgment or decree die before the same is satisfied or carried into effect, the judgment or decree, if for money or concerning personal property, shall survive to the executors or administrators of such deceased party, and if concerning real estate, to his heirs or devisees.

SEC. 3929. In each of the preceding cases, execution (l) may be sued out in the name of the surviving plaintiff, for the benefit of himself and legal representatives of the deceased party; or such judgment or decree may be revived in the name of such legal representatives and the surviving plaintiff, and execution may be sued out jointly.

DEATH OF ONE OR MORE DEFENDANTS, JUDGMENT SURVIVES—EXECUTION MAY ISSUE.

SEC. 3930. When there are several defendants in a judgment or decree, and some of them die before the same is satisfied or carried into effect, the judgment or decree, if for money, or concerning personal property, shall survive against the executor or administrator of the deceased party, and if concerning real estate, against his heirs or devisees (m).

SEC. 3931. In each of the cases mentioned in the preceding section, execution may be issued in the name of the surviving plaintiff, for the benefit of himself and the legal representatives of any deceased plaintiff, or in the name

(k) In a *scire facias* to revive a judgment it is error to render a new judgment for the debt or damages; also, to adjudge that it be revived from the date of the issuance of the writ, where the lien has expired before the suing out of the *sci. fa.* *Hanly v. Adams*, 15-232.

(*) The plaintiff may proceed to revive by *scire facias* and by action at law at the same time. *Garibaldi v. Carroll*, 33-568.

(l) See SECS. 2980-2984, 3039, 3040.

(m) Upon the death of one of several defendants in a judgment, the plaintiff has a right to a separate revival against a representative of the deceased. *Finn, admr., v. Cra'tree*, 12-597.

of the surviving plaintiff and the representatives of any deceased plaintiff, against any surviving defendant (n).

SEC. 3932. Such judgment or decree may be revived against the representatives of any deceased defendant, by *scire facias* in the name of the surviving plaintiff and the representatives of such as are deceased.

SEC. 3933. Executions may be issued against the surviving defendant and the representatives of the deceased defendants, or such of them as are jointly made parties.

SEC. 3934. If any executor or administrator be plaintiff or defendant in any judgment or decree, or shall die, resign or be dismissed before the same is satisfied or carried into effect, the judgment or decree may be revived by or against the administrator *de bonis non* in manner aforesaid. *Rev. Stat., chap. 84, secs. 12-18.*

LIENS UPON.

SEC. 3935. When any judgment is recovered in a court of record by, or in favor of, any party, all officers who, in pursuance of law, and attorneys who, upon contract expressed or implied, have rendered service for or in behalf of such party, in the action or proceeding in or upon which such judgment was rendered, shall severally have liens upon and an interest in such judgment, as follows:

First. Each officer to the amount to which he is entitled by law as costs, fees, allowances or otherwise, for services rendered to or on behalf of such party.

Second. Each attorney to the amount to which he is entitled by contract, or, if no amount is fixed, a reasonable compensation for his services rendered as aforesaid for, or on behalf of, such party (o).

SEC. 3936. Any property sold upon, in pursuance of, or to satisfy such judgment, and purchased directly or indirectly by, or on behalf of, the party in whose favor such judgment was rendered, his heir, personal representative or assignee, shall be deemed to be held in trust for any person holding such lien, to the amount of his lien, until the same is discharged.

SEC. 3937. When such judgment is for the recovery of real or personal property, the lien shall amount to an interest in such property to the extent of such lien.

SEC. 3938. Such lien in favor of an attorney for services rendered as aforesaid shall not prevail against any one who, in good faith and without notice of such lien, has made payments to the person in whose favor such judgment was rendered, upon or in consequence of such judgment, unless such attorney shall have asserted his lien as provided in the next section.

SEC. 3939. Any attorney who has a lien upon any judgment under the

(n) See SECS. 2983, 3039, 3040.

(o) If the judgment be for the recovery of property, the attorney's lien gives him an interest in it which may be enforced in equity. *Lane v. Hallum*, 38—385. An attorney has no lien on a judgment recovered in favor of the state. *Compton v. State, Ib.*, 601. If the plaintiff purchases land sold in satisfaction of his judgment, the attorney's lien attaches to the land. The filing of the lien with the clerk is necessary only for the protection of those who, in good faith and without notice, make payments on the judgment. The lien is superior to the rights of the assignee or heirs of the plaintiff, but extends only to the fee in the particular case. *Porter v. Hanson*, 36—591. Where an attorney in a suit causes property to be attached, the lien of the attachment inures to his benefit, and can not be defeated by any settlement between the parties. *Gist v. Hanly*, 33—233.

See also *McCain v. Portis*, 42—402.

provisions of the preceding sections may, within ten days after the rendition of such judgment, file with the clerk a statement in writing, signed by himself or his agents, stating that he claims a lien upon such judgment for services rendered by him. Whereupon, the clerk shall enter upon the record, upon the margin of such judgment or near the same, a memorandum showing that such person claims a lien upon such judgment, which memorandum shall be indorsed upon each execution and order of sale issued thereon, and shall, as to all persons, be equivalent to actual notice of such lien. *Civil Code, secs. 426, 427.*

ENTRY OF SATISFACTION.

SEC. 3940. Whenever the whole judgment shall appear to be satisfied by the return of an execution, it shall be the duty of the clerk to enter in the judgment book, in the space left for that purpose, "satisfied by execution."

SEC. 3941. Whenever a judgment is satisfied otherwise than upon an execution, it shall be the duty of the party or his attorney, within sixty days thereafter, to enter satisfaction in the judgment book, which shall be sufficiently done by writing the words "satisfied in full," with the date of the entry and the signature of the party making it.

SEC. 3942. If the person receiving satisfaction for any such judgment or decree shall neglect or fail to enter satisfaction within the time prescribed in the preceding section, such person shall forfeit and pay to the person against whom such judgment or decree may have been entered any sum not exceeding one hundred and fifty dollars, nor less than five dollars.

SEC. 3943. Satisfaction of a judgment or decree may be entered by the plaintiff in person, by his attorney of record, or by an agent duly authorized in writing for that purpose, under the hand of the plaintiff.

SEC. 3944. When the entry of satisfaction is made by an agent, his authority shall be filed in the office of the clerk of the court in which the judgment or decree may be.

SEC. 3945. Satisfaction entered in accordance with the preceding provisions shall forever discharge and release the judgment or decree.

SEC. 3946. If the person receiving satisfaction of any judgment or decree shall neglect or refuse to acknowledge the same within the time prescribed, the party interested may, on notice given to the adverse party or his attorney, apply to the court to have satisfaction entered.

SEC. 3947. If the court shall be satisfied that the plaintiff, his agent or attorney, has received full satisfaction of such judgment or decree, an order shall be made directing the clerk to enter satisfaction on the same, which shall have the same effect as if it had been acknowledged by the party; and the costs attending such application shall be recovered of the party so refusing, by execution as in other cases. *Rev. Stat., chap. 84, and Civil Code, sec. 425.*

DUTY OF CLERKS.

SEC. 3948. The clerk must keep among the records of the court a book to be called the "judgment book," and in entering judgments or decrees therein

shall leave a space or margin on the record in which to enter a memorandum of the satisfaction or setting aside of any such judgment or decree.

SEC. 3949. When satisfaction of a judgment or decree shall be acknowledged or entered by order of the court, or satisfaction shall be made by execution, or such judgment or decree shall be reversed or set aside, the clerk shall enter in the margin of the judgment book, opposite such judgment or decree, a memorandum of the disposition thereof, the date and the book and page in which the evidence of such disposition is entered on record.

SEC. 3950. All judgments and decrees, whether rendered by the court or by confession, shall be entered by the clerk in the "judgment book" in the order of their date.

SEC. 3951. The clerk, in recording any final judgment or decree in the judgment book, shall set forth the names of the parties, the date of the judgment or decree, its nature, the amount of debt, damages and costs, with a reference to the book and page in which such judgment or decree was originally entered.

SEC. 3952. He shall, immediately after the rendition of any judgment or decree, enter the same in the judgment book, in which shall be alphabetically cross-indexed all the judgments of the court, according to the surnames of the plaintiff and defendant; and if there is more than one plaintiff or defendant, then of the plaintiff and defendant first named in the complaint. It shall be so arranged that all the judgments in the case of plaintiffs whose surnames commence with the same letter shall be together, and all of each term shall immediately succeed each other. *Rev. Stat., chap 84, and Civil Code, sec. 424.*

DECREE MAY OPERATE TO PASS TITLE.

SEC. 3953. In all cases where the court may decree the conveyance of real estate, or the delivery of personal property, they may, by decree, pass the title of such property without any act to be done on the part of the defendant, where it shall be proper, and may issue a writ of possession if necessary, to put the party in possession of such real or personal property, or may proceed by attachment or sequestration (p).

SEC. 3954. When an unconditional decree shall be made for a conveyance, release or acquittance, and the party required to execute the same shall not comply therewith, the decree shall be considered and taken to have the same operation and effect, and be as available as if the conveyance, release or acquittance had been executed conformably to the decree. *Rev. Stat., chap. 23, secs. 123, 124.*

DECREES FOR THE CONVEYANCE OF REAL ESTATE TO BE RECORDED.

SEC. 3955. In all cases where any court of chancery shall decree a conveyance of real estate, or that real estate pass, the party in whose favor the decree is made shall cause a copy thereof to be recorded in the recorder's office of the county in which the lands passed or to be conveyed lie, within one year after

(p) Such a decree binds the defendant and his heirs and purchasers, except those purchasing for a valuable consideration, without notice, where the decree has not been recorded as required by section 3955. *Wilson v. Spring*, 38—181.

the making of such decree; and if such decree be not recorded within such time, it shall be void as to all subsequent purchasers without notice.

SEC. 3956. The term "real estate," as used in this act, shall be construed to include all estates and interest in lands and tenements, whether legal or equitable, liable to be sold under execution. *Rev. Stat., chap. 84, secs. 33, 34.*

CHAPTER LXXXIX.

JUDGMENTS SUMMARY.

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3957. In what cases and against whom summary judgments and orders may be obtained on motion.

3958, 3959, 3960, 3961, 3962. Notice and proceedings in such cases.

3963. Such judgment may be rendered against officer and his sureties.

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3964. In what cases and for what amount judgments shall be rendered for the plaintiff against a sheriff, coroner or constable and his sureties.

3965. Same, for the defendant.

3966. In what cases and for what amount judgments shall be rendered for the plaintiff against a circuit clerk and his sureties.

SECTION 3957. Judgments and final orders may be obtained, on motion, by sureties against their principals (a); sureties against their co-sureties, for recovery of money due them on account of payments made by them as such; by clients against attorneys (b); plaintiffs in executions against sheriffs, constables and other officers (c), for the recovery of money or property collected for them and damages, and in all other cases specially authorized by statute.

SEC. 3958. Notice of such motion shall be served upon the party against whom the judgment or order is sought, at least ten days before the motion is made (d).

SEC. 3959. The notice shall state in plain and ordinary language the nature and grounds of the motion and the day on which it will be made.

SEC. 3960. Unless the motion is made or entered on the motion docket on the day specified in the notice, it shall be considered as abandoned.

SEC. 3961. The motion mentioned in this chapter may be made on any day of the term of court.

SEC. 3962. The motion shall be heard and determined without written pleadings, and judgment given according to law and the rules of equity. *Civil Code, secs. 478-483.*

SEC. 3963. Judgments shall be rendered summarily against the officers and their securities, and for the defaults hereinafter stated.

SEC. 3964. Judgments shall be rendered for the plaintiffs in the following

(a) See SECS. 6405, 6406.

(b) See SEC. 413.

(c) See SECS. 3963, 3964, 3965, and as to constables, see further SECS. 4128-4133.

Summary judgment may be rendered against the sureties on delivery bonds in attachment cases. *Fletcher v. Menken*, 37-206.

(d) This summary remedy is in derogation of the common law and penal in its nature, and must be strictly pursued. The notice performs the functions of the summons and the declaration in an ordinary case. Where the execution issues from the circuit court of one county to the sheriff of another, this summary proceeding can not be maintained in the former county. *Milor v. Farrelly*, 25-353.

cases against the sheriff, coroner or constable receiving or executing the writ and their sureties:

First. For failing to return an execution; the amount of the judgment on which it was issued, including all the costs and ten per centum thereon (c).

Second. For failing to pay over money collected upon an execution, on demand of the plaintiff, his agent or attorney; judgment for the amount so collected and ten per centum per month damages from the time such demand was made.

Third. For failing to make the money on an execution, which, by due diligence, could have been made; judgment for the amount of the execution, interest, costs and ten per centum damages. *Provided*, the sheriff or other officer shall have the same defenses, with regard to property the title to which is contested, that now exist by law.

Fourth. For making a false return upon an execution; judgment for the amount of the execution, interest and costs, and ten per centum damages thereon.

Fifth. For failing to indorse on an execution the true date of its delivery to him; judgment for twenty per centum on the amount of the execution, and the officer shall also be responsible for any injury or loss which may arise from such omission.

Sixth. For failing to execute a summons, attachment or other *mesne* process which, by due diligence, could have been executed; judgment for a sum not less than fifty nor more than five hundred dollars, to be ascertained by a jury, and this remedy shall not preclude the party injured from a resort to other legal means of redress.

Seventh. For failure to pay, on demand, to the party or officer entitled to receive the same, all money received by him in his official capacity, and which it is, by law, his duty to pay over, whether it be for fines, forfeitures, costs or other indebtedness; judgment in favor of the party or officer, as the case may be, for the amount for which he is liable, and ten per centum per month thereon from the time the same should have been paid until paid.

SEC. 3965. Judgment shall in like manner be rendered in favor of the defendant against the sheriff, coroner or constable and their sureties:

First. For the failure to pay over, on demand, any excess of money which may remain upon a sale by execution, after the satisfaction thereof, and the costs; judgment for the amount of such excess, and five per centum per month after demand.

Second. For failing to return an execution, wholly or partially satisfied; twenty-five per centum on the amount paid.

Third. For failing to pay over, on demand, money paid or collected on an execution, the whole, or any part of which, is enjoined in chancery, or the judgment on which said execution issued has, in any manner, been reversed or set aside, or the execution superseded or quashed; judgment for the amount and five per centum per month on the amount from the time such execution was returnable.

(c) If a sheriff fails to return an execution, which he has accepted without a demand for his fees, on or before the return day, he is liable to the plaintiff for the amount of the judgment, with costs and ten per cent. thereon, and the plaintiff is entitled to summary judgment therefor. *Herr v. Atkinson*, 40—377. But see *Atkinson v. Hulse*, 30—760.

SEC. 3966. Judgment shall in like manner be rendered against the clerk of the circuit court and his sureties in favor of the plaintiff:

First. For failing to issue an execution upon a forfeited delivery bond within five days after the return thereof to his office by the proper officer; twenty-five per centum on the amount of the debt.

Second. For failing to issue execution upon any judgment, order or decree in his office on request of the party interested, his agent or attorney; twenty-five per centum on the amount of the judgment.

Third. For failing to issue an attachment, summons or other *mesne* process which the party applying may be entitled to have issued; judgment for a sum not less than fifty nor more than five hundred dollars, to be ascertained by a jury, and this remedy is not to preclude the party injured from a resort to other legal means of redress. *Act Jan. 15, 1857.*

CHAPTER XC.

JURY.

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QUALIFICATIONS AND EXEMPTIONS OF JURORS.

SECTION 3967. No person shall be qualified to serve as a grand juror unless he is an elector and citizen of the county in which he may be called to serve, temperate and of good behavior. *Crim. Code, sec. 406, as amended 1871.*

SEC. 3968. No person shall serve as a petit juror who is related to either party to a suit within the fourth degree of consanguinity or affinity (a). *Rev. Stat., chap. 85, sec. 11.*

(a) See SEC. 3984.

SEC. 3969. No witness (b) or person summoned as a witness in any civil cause, and no person who has formed and expressed an opinion concerning the matter in controversy in any such suit which may influence the judgment of such person, shall be sworn in the same cause as a juror. *Rev. Stat., chap. 116, sec. 101.*

SEC. 3970. No verdict shall be void or voidable because any of the jurymen fail to possess any of the qualifications required in this chapter; nor shall exceptions be taken to any jurymen for that cause after he is taken upon the jury and sworn as a jurymen. *Crim. Code, sec. 407, as amended 1871.*

SEC. 3971. No physician, surgeon, practicing attorney, minister of any religious society, officer of a court, ferry-keeper, overseer of roads, constable, or person over sixty years of age, shall be compelled to serve on a petit or grand jury (c). *Crim. Code, sec. 407, as amended 1871, and Rev. Stat., chap. 85, sec. 13.*

SEC. 3972. The active members of any fire or hook and ladder company of any incorporated city, regularly organized by the mayor and aldermen of such city, are exempted from serving upon the grand and petit jury. *Provided*, the mayor of such city shall, at the commencement of each month, cause to be made out a list of persons entitled during that month to the exemption herein provided for, and quarterly cause one copy of such list to be posted up at the court-house door of the county, and file one copy with the county clerk.

SEC. 3973. It shall be the duty of the mayor, in making out such list, to see that no person is included therein unless he be an active member of a company, and shall never have absented himself from two successive fires in said city, or two successive regular monthly meetings of his company, either with or without an excuse for such absence.

SEC. 3974. If any person who is not exempt shall, by mistake or otherwise, be included in such lists of exempted persons, he may be required to perform service as such juror, the same as any other citizen.

SEC. 3975. This act shall be construed as exempting only, for the proper month, the firemen included in the monthly list required of the mayor. *Act April 3, 1869.*

JURY COMMISSIONERS—APPOINTMENT, OATH AND DUTIES.

SEC. 3976. Jurors in both civil and criminal cases shall be selected as follows: The circuit courts at their several terms shall select three jury commissioners possessing the qualifications prescribed for petit jurymen, who have no suits in court requiring the intervention of a jury.

SEC. 3977. The same person can not act as a jury commissioner more than once in the same year.

SEC. 3978. The judge shall administer to the commissioners the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not, knowingly, select any man as a jurymen whom you believe unfit and not qualified; that you will not make known to any one the name of any jurymen selected by you and reported on your list to the court, until after the commencement of the next term of this court; that you

(b) See SEC. 2908.

(c) The following persons are also exempt from serving on juries: officers and attendants of lunatic asylum, SEC. 4545; employes in deaf-mute institute, SEC. 2497; millers, SEC. 4666; directors of school districts and county examiners, SEC. 6237.

will not, directly or indirectly, converse with any one selected by you as a jurymen concerning the merits of any suit to be tried at the next term of this court, until after said cause may be tried or continued, or the jury be discharged."

SEC. 3979. If any person appointed a jury commissioner shall fail or refuse to attend and perform the duties required without a reasonable excuse, he shall forfeit and pay twenty-five dollars.

SEC. 3980. The jury commissioners, after they have been organized and sworn, shall retire to a jury room or some other apartment, designated by the judge.

SEC. 3981. They shall be kept free from the intrusion of any person, and shall not separate without leave of the court, until they shall have completed the duties required of them. *Crim. Code, sec. 401, as amended 1871.*

To Select Grand Jurors and Alternates.

SEC. 3982. They shall select from the electors of the county sixteen persons of good character, of approved integrity, sound judgment and reasonable information, to serve at the next term of the court as grand jurors, and, when ordered by the court, shall select such other number as the court may direct, not to exceed nine electors, having the same qualifications, for alternate grand jurors, and make separate lists of the same, specifying in one list the names of the sixteen persons selected as grand jurors, and certify the same as the list of grand jurors; and specifying in the other list the names of the alternate grand jurors, and certifying the same as the list of alternates; said grand and alternate grand jurors shall be selected from all parts of the county.

SEC. 3983. The two lists shall be inclosed and sealed, so that the contents can not be seen, and indorsed "list of grand jurors," designating for what term of the court they are to serve; which indorsement shall be signed by the commissioners, and the same shall be delivered to the judge in open court. *Ib., sec. 402, as amended by act March 18, 1881.*

To Select Petit Jurors and Alternates.

SEC. 3984. The commissioners shall also select from the electors of said county such number as the court may direct, not exceeding twenty-four persons, having the qualifications prescribed in section 3982, to serve as petit jurors at the next term of the court; and, when ordered by the court, shall select such other number as the court may direct, not to exceed twelve electors, having the same qualifications, for alternate petit jurors, and make separate lists of the same, specifying in the first list the names of the petit jurors so selected, and certify the same as the list of petit jurors; and specifying in the other list the names of the alternate petit jurors so selected, and certifying the same as such; and the two lists, so selected and certified, shall be inclosed, sealed and indorsed "lists of petit jurors," and delivered to the court, as specified in section 3983 for the list of grand jurors.

Oath of Clerk or Deputy.

SEC. 3985. The judge shall deliver the lists to the clerk in open court, and administer to the clerk and his deputies the following oath: "You do swear that you will not open the jury lists now delivered to you until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a petit juror concerning any suit pending and for trial in this court at the next term, unless by leave of the court."

SEC. 3986. Should the clerk subsequently appoint a deputy in vacation, he shall administer to him the like oath. *Ib.*, sec. 403, as amended by act March 18, 1881.

SUMMONING THE JURORS.

SEC. 3987. Within thirty days before the next term, and not before, the clerk shall open the envelopes and make out a fair copy of the list of grand jurors, and a fair copy of the list of alternate grand jurors; also a fair copy of the list of petit jurors, and a fair copy of the list of alternate petit jurors, and give the same to the sheriff or his deputy, who shall, at least three days prior to the first day of the next term, summon the persons named as grand jurors and alternate grand jurors to attend, on the first day of said term, as grand jurors, and the persons named as petit jurors and alternate petit jurors to attend said term on such day as the court shall have designated by order as petit jurors, by giving personal notice to each, or by leaving a written notice at the juror's place of residence, with some person over ten years of age.

SEC. 3988. The sheriff shall return said list, with a statement in writing of the date and manner in which each juror was summoned.

SEC. 3989. If no day for the appearance of the petit jurors shall have been fixed by order of the court, they shall be summoned to attend on the second day of the term.

SEC. 3990. If a juror or alternate, legally summoned, shall fail to attend, he may be fined any sum not less than one nor more than thirty dollars.

FORMATION OF GRAND JURY.

SEC. 3991. A grand jury of sixteen persons shall be selected from those designated as grand jurors, but if any should be absent, incompetent to serve, or excused, the deficit shall be made up by taking a sufficient number of competent alternates present, in the order in which their names appear upon the list (d).

SEC. 3992. If there shall not be a sufficient number of competent grand jurors and alternates present and not excused to form a grand jury, the court may compel the attendance of absentees, or order bystanders to be summoned to complete the jury.

EXCUSES AND DISCHARGES.

SEC. 3993. The court, for good cause, may excuse any person summoned from serving on either jury, and may discharge any who are not competent jurymen.

(d) For oath of grand jury, see SEC. 2075; for their powers and duties, SECS. 2073-2099.

SEC. 3994. After the formation of the grand jury, the alternates not taken shall be discharged.

SEC. 3995. No person shall be compelled to serve as a grand or petit jurymen more than one term in any one year.

SEC. 3996. After the panel of petit jurors shall have been formed, the alternates not taken shall be discharged.

SEC. 3997. Alternates not taken shall receive pay from the time they appeared until their discharge.

WHEN SECOND LIST OF PETIT JURORS MAY BE SELECTED.

SEC. 3998. In counties where the term of the court fixed by law is, or may be, more than twelve judicial days, the court, in selecting a petit jury for such term, may direct the jury commissioners to draw and return a second list of petit jurors, which is to be selected, delivered and indorsed like the first list, except to be designated "No. 2."

SEC. 3999. After the commencement of the term, the court may, if it thinks proper, order said list to be opened and copied, and the persons selected to be summoned to appear on such day in said term as the court shall designate.

SEC. 4000. Such new jury shall be ordered and sworn as the petit jury for the balance of the term, and the first jury shall be discharged.

SEC. 4001. If any of list "No. 2" shall fail to attend, or be excused, or are incompetent, a sufficient number of those on the first panel who are willing to serve shall be taken, in the order in which their names appear upon the record, to complete the second panel.

SEC. 4002. In default of a sufficient number of the first panel who are willing to serve to complete the second panel, the court shall order the bystanders to be summoned to complete the same. *Crim. Code, secs. 404-405, 409, as amended 1871.*

COURT TO ORDER SHERIFF TO SUMMON GRAND OR PETIT JURY, WHEN.

SEC. 4003. If, for any cause, the jury commissioners shall not be appointed, or shall fail to select a grand or petit jury, as provided in this chapter, or the panel selected shall be set aside, or the jury lists returned in court shall be lost or destroyed, the court shall order the sheriff to summon a grand or petit jury of the proper number, who shall attend and perform the duties thereof, respectively, as if they had been regularly selected (e). *Ib., sec. 408.*

FORMATION OF THE PANEL OF REGULAR JURORS FOR THE TERM.

SEC. 4004. A panel of twenty-four petit jurors shall be formed from the list of petit jurors and alternates, and bystanders, if necessary, in the manner prescribed in sections 3991 and 3992 for the selection of the grand jury, which shall be organized and sworn as provided in section 4006 (f). *Ib., sec. 404.*

(e) After the regular grand jury has been discharged, the court may order a special grand jury to be summoned, in certain cases. SEC. 2097.

(f) This and the four following sections seem to contemplate that the panel of regular jurors for the term shall be called and organized, and the jurors sworn, on the day they are summoned to attend. Such is the practice in a sister state, from the Revised Statutes of which this chapter seems mainly to have been taken. *Sec Rev. Stat. Ky., p. 432.*

SEC. 4005. Such panel shall be the regular jurors for the trial of all jury cases, both civil and criminal. *Civil Code, sec. 342.*

Oath of Jurors.

SEC. 4006. The names of such jurors shall be entered on the order book, and they shall be sworn in substance as follows: "You, and each of you, do solemnly swear (or affirm) that you will well and truly try each and all of the issues, inquisitions and other matters submitted to you respectively as jurors, at the present term of this court, and a true verdict render according to law and evidence, unless discharged by the court or withdrawn by the parties." *Ib.*

SEC. 4007. Said oath shall be binding upon each juror so sworn in all civil cases upon which he may act as juror during said term. *Ib., sec. 343.*

Vacancy or Deficiency in Panel—How Filled.

SEC. 4008. If, for any cause, any of said jurors shall, at any time, be released from serving for the balance of the term, others shall be summoned and sworn, so that there shall be at all times a panel of twenty-four regular jurors. *Ib., sec. 343.*

SEC. 4009. If a jury for the trial of any case can not be obtained out of said panel of regular petit jurors, bystanders shall be summoned, as the court may direct, to complete such jury, and the oath mentioned in section 4006, adapted to that particular case, shall be administered to said bystanders, and the record shall contain the names of said bystanders, together with the statement that they were selected and sworn according to law. *Ib., sec. 344.*

CHALLENGES.

SEC. 4010. A challenge to the array, or for cause, shall be decided by the court. *Ib., secs. 345, 346.*

SEC. 4011. In order to determine a challenge for cause, the particular juror or jurors challenged may be sworn, or, at the instance of either party, all of the jurors may be sworn to make true and perfect answers to such questions as may be demanded of them touching their qualifications as jurors. The court may allow other testimony in regard to the qualifications of any juror. *Ib., sec. 346.*

SEC. 4012. Each party shall have three peremptory challenges, which may be made orally. *Ib., sec. 347.*

TRIAL JURY—HOW DRAWN.

SEC. 4013. If either party shall desire a panel, the court shall cause the names of twenty-four competent jurors, written upon separate slips of paper, to be placed in a box to be kept for that purpose, from which the names of eighteen shall be drawn, and entered on a list in the order in which they were drawn, and numbered.

SEC. 4014. Each party shall be furnished with a copy of said list, from which each may strike the names of three jurors, and return the list so struck

to the judge, who shall strike from the original list the names so stricken from the copies, and the first twelve names remaining on said original list shall constitute the jury. *Ib.*

SEC. 4015. Before the drawing of the list above mentioned, the court shall decide all challenges for cause which are presented, and, if there are not twenty-four competent jurors, bystanders shall be summoned as hereinbefore provided (g), until the requisite number of competent jurors is obtained, from which said list shall be drawn. Where there are several persons on the same side, the challenge of one shall be the challenge of all under this chapter. *Ib.*, sec. 348.

CHAPTER XCI.

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JUDGMENT ON APPEAL AND PROCEEDINGS THEREON.

4153. How judgment rendered.
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ELECTION, QUALIFICATION, ETC.

SECTION 4016. The qualified electors of each township shall elect the justices of the peace for the term of two years, who shall be commissioned by the governor, and their official oath shall be indorsed on the commission.

SEC. 4017. For every two hundred electors there shall be elected one justice of the peace; but every township, however small, shall have two justices of the peace.

SEC. 4018. A justice of the peace shall be a qualified elector and a resident of the township for which he is elected. *Art. VII, secs. 38, 39 and 41, Const.*

SEC. 4019. The county court of each county shall, upon the application of any justice of the peace, furnish him with two good and substantial leather-bound books, of at least six quires each, to be used as civil and criminal dockets. Justices of the peace, or other persons having in their possession, or entitled to receive from their predecessors in office, blank books, as contemplated in this section, shall not be entitled to receive such blank books from said court. *Act March 28, 1871, sec. 1.*

SEC. 4020. Each justice of the peace shall turn over to his successor in office all books and papers belonging to his office, and shall take the receipt of his successor therefor in duplicate, and file one copy thereof in the county clerk's office. The justice to whom the same shall be delivered shall have full power and authority to do every official act which the justice to whose office he shall have succeeded might or could have done (a). *Act March 28, 1871, sec. 2, and act Jan. 5, 1843, sec. 2.*

SEC. 4021. Any person or officer failing to comply with the provisions of this act shall be guilty of a misdemeanor, and be fined in any sum not less than ten nor more than one hundred dollars. *Act March 28, 1871, sec. 3.*

SEC. 4022. No two justices shall deliver their dockets and papers to the same justice, except in cases where a sufficient number of justices shall not have been elected to supply every vacancy. *Act Jan. 5, 1843.*

SEC. 4023. When justices of the peace remove from their election precincts, their offices are vacated, and they are liable to a fine of fifty dollars for acting as such after their removal. *Act Dec. 16, 1868, sec. 6.*

SEC. 4024. When a township shall be divided, and any justice of the peace of the original township shall fall into the new township, he shall continue to discharge the duties of a justice of the peace until his commission expires, in the same manner as if such township had not been divided, only his process shall be in conformity with the name of the township in which he resides (*). *Rev. Stat., chap. 86, sec. 9.*

SEC. 4025. All resignations of justices of the peace shall be in writing, and addressed to the county clerk, who shall immediately inform the governor of such resignation. *Ib., sec. 23.*

JURISDICTION.

SEC. 4026. Justices of the peace shall severally have original jurisdiction in the following matters:

First. Exclusive of the circuit court, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars, excluding interest (†); and concurrent jurisdiction in matters of contract, where the amount in controversy does not exceed the sum of three hundred dollars, exclusive of interest (‡).

Second. Concurrent jurisdiction in suits for the recovery of personal property, where the value of the property does not exceed the sum of three hundred dollars (aa); and in all matters of damage to personal property, where the amount

(a) See SEC. 4107. *Gates v. Bennett*, 33—475.

(*) For election or appointment of officers for new townships and of additional officers of existing townships made necessary by a change of boundary lines, see SECS. 6445, 6446.

(†) See *Berry v. Linton*, 1—252; *Collins v. Woodruff*, 9—463; *Mannington v. Young*, 35—287.

(‡) See *Hibbard v. Kirby*, 38—102.

(aa) In an action for the recovery of personal property before a justice of the peace, the affidavit must show that the value of the property does not exceed three hundred dollars. *McClure v. Hill*, 36—268.

in controversy does not exceed the sum of one hundred dollars (b). *Art. VII, sec. 40, Const.*

SEC. 4027. Such jurisdiction shall be co-extensive with the county in which they are elected or appointed. *Act April 29, 1873, sec. 2.*

SEC. 4028. A justice of the peace shall not have jurisdiction where a lien on land, or title or possession thereto, is involved (*). *Art. VII, sec. 40, Const.*

SEC. 4029. Actions cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the peace of the township wherein the defendant resides, or is found, or, if there be one or more defendants in different townships, then in the township where one of them resides, or is found. *Provided*, that actions by attachment, actions for the recovery of personal property, actions for provisional remedies, and all criminal actions and proceedings, may be brought before any justice of the peace in the county. *Act April 29, 1873, sec. 2, as amended by act Feb. 26, 1875.*

SEC. 4030. The constable of the township in which the suit may be brought shall serve the process on all the defendants named therein found in the county.

SEC. 4031. Whenever there shall be no justice within the township where any suit cognizable before a justice ought to be brought, or when all the justices of such township are interested in any such suit, or otherwise disqualified by law from trying the same, every such suit may be brought before some justice in the same county.

DOCKET.

SEC. 4032. Every justice of the peace shall keep a docket, in which shall be entered in continuous order, with the proper date to each act done:

First. The title to each cause.

Second. A brief statement of the nature and amount of the plaintiff's demand, and the defendant's set-off (if any), giving date to each where dates exist.

Third. The issuing of the process and return thereon.

Fourth. The appearance of the respective parties.

Fifth. Every adjournment, stating at whose instance and for what time.

Sixth. The trial, and whether by the justice or a jury.

Seventh. The verdict and judgment.

Eighth. The execution, to whom delivered and the amount of debt, damages and costs indorsed thereon.

(b) For criminal jurisdiction, see fifth subdivision of SEC. 1966, and SECS. 1492-1494; for mode of proceeding as an examining magistrate, SECS. 2019-2040; for practice and proceedings in trial of misdemeanors, SECS. 2367-2380.

"Matters of damage to personal property" in this section means all injuries which one may sustain in respect to his ownership of personal estate. *St. Louis, I. M. & S. Railway Co. v. Heath*, 41-476. See *Stanley v. Bracht*, 42-210; *Moreland v. Condry*, 40-78.

A justice of the peace has jurisdiction of an action for damages to personal property by negligence in the keeping of a ferry when the amount is one hundred dollars or less. *Wells v. Steele*, 31-219.

(*) In an action by a landlord against a tenant for rent, the jurisdiction of the justice can not be defeated by a denial of the plaintiff's title to the land. *Mathews v. Morris*, 31-222; *Nolen v. Royston*, 36-561.

When a justice of the peace sees that the title to lands must come in controversy before him, he should dismiss the case and refuse to take further cognizance of it. *Fitzgerald v. Beebe*, 7-305. But an answer setting up a want of title to the land is not, of itself, sufficient to oust the jurisdiction, without evidence on the trial tending to bring the title into question. *Bramble v. Beidler*, 38-200; *Jordan v. Henderson*, 37-120.

A justice of the peace has no jurisdiction to enforce a mechanic's lien on land. *White v. Millbourne*, 31-486. Nor in actions for trespass on real estate. *School District v. Williams*, 38-454.

Ninth. The giving a transcript for filing in the clerk's office, or for set-off, if one is given.

Tenth. A note of all motions made, and whether refused or granted.

Eleventh. An itemized statement of all the costs in the case (*).

SEC. 4033. Such docket shall be open to the inspection of any party interested, his agent or attorney.

SUITS, HOW BROUGHT.

SEC. 4034. The parties to the action may be the same as in the circuit court, and all the proceedings prescribed for that court, as far as the same are applicable and not herein changed, shall be pursued in justices' courts. But the powers of justices' courts shall be and are only such as are in this chapter enumerated. *Act April 29, 1873, sec. 5.*

SEC. 4035. This act, with the exceptions and provisos herein contained, is intended to be, and is hereby declared to be, the sole and only law governing the mode of proceedings (c) in justices' courts in civil actions. *Ib., sec. 125.*

SEC. 4036. Ordinary actions shall be commenced by summons (d), but before the summons is issued the plaintiff shall file with the justice the account, or the written contract, or a short written statement of the facts on which the action is founded (dd).

SEC. 4037. The summons, orders for provisional remedies and other process shall be directed to a constable, but may be served by any officer or person authorized by law to serve process (†).

SEC. 4038. Justices of the peace shall have power to appoint special agents to execute orders of arrest, attachments and other provisional remedies, and the summons which accompanies them, whenever an affidavit is filed with such justice by the plaintiff or his agent to the effect that he believes that, owing to the absence or difficulty of procuring a proper officer, the process or other order can not be executed without injurious delay; also where there is no constable in the township.

SEC. 4039. The appointment hereby provided for shall be made by an indorsement on the writ or order and signed by the justice.

SEC. 4040. The service and return thereto of process shall be made in the same manner as in the circuit court (e), except that no service shall be made by publication other than is herein provided for (f), nor shall any return made by another than the sheriff, coroner or constable of the county be valid unless sworn to. *Ib., secs. 6-8, 10.*

(*) The docket entries are *quasi* records, and, when certified, receivable in evidence. *Gates v. Bennett*, 33-475.

(c) The proceedings in replevin and suits by attachment and garnishment are governed by the practice and rules of proceedings prescribed for the circuit court, as far as the same are applicable. SEC. 4124.

(d) The justice is required to indorse on back of summons amount of plaintiff's demand and all costs. SEC. 4119.

(dd) See *Anthony, ex parte*, 5-358; *Keath v. Berkley*, 7-469; *Everett v. Clements & Thompson*, 9-478; *Jacks v. Nelson & Hanks*, 34-531.

(†) See *McCabe v. Payne*, 37-450.

(e) For mode of service and return of summons, see SECS. 4975-4977; for service and return of order of attachment, SECS. 319-330.

(f) A justice may make a warning order, and service may be made by publication in cases commenced by attachment. SEC. 4124.

CHANGE OF VENUE.

SEC. 4041. Either party may take a change of venue from one justice of the peace to another in the same township, but it shall be the duty of the party so applying, before the commencement of the trial, to file an affidavit setting up that the justice is a material witness for affiant, or of near relation to the other, or so prejudiced against him that he can not obtain a fair and impartial trial before such justice; and the justice shall thereupon transmit all the original papers in said case and a certified transcript of the proceedings to the next nearest justice of the peace in the same township, who shall proceed in the case in the same manner as if the suit had originally been commenced before him. *Provided*, that the same party shall not be allowed to file such affidavit against exceeding two justices in the same case.

SEC. 4042. Should there be no other justice of the peace in the township competent to try the cause, it shall be certified to the nearest justice in any adjoining township, who shall try and determine the same in the same manner as if the parties were residents of his township, and the suit had been originally commenced before him.

SEC. 4043. Either party, at the calling of the cause, may make an affidavit to the effect that he verily believes he can not obtain a fair and impartial trial in the township in which the action is pending; and may embrace in his affidavit one township in addition to the one in which the action is pending, and the opposite party may, without affidavit, object to the same number of townships to which the party making the application has objected; and thereupon it shall be the duty of such justice to make an order for the change of venue to some justice in a township to which there is no valid objection, and which is, in his judgment, most convenient to the parties and their witnesses; and said justice shall transmit without delay the original papers in the case and a transcript of the proceedings to the justice to whose court the venue is changed, for which he shall receive five cents per mile to and from the office of such justice, which shall be taxed and collected as other costs in the case, together with his costs for making out such transcript.

SEC. 4044. If the justice of the peace to whom the papers are so transferred can not, immediately upon the reception and filing of the same, proceed to try said case, it shall be his duty at once to fix a time therefor, of which all parties shall take notice. *Ib.*, *secs.* 20-23.

WHEN TRIAL TO BE HAD—APPEARANCE OF PARTIES, ETC.

SEC. 4045. When the matter in controversy does not exceed fifty dollars, the service of the summons five days before the time of trial shall authorize a trial and judgment, and when the matter in controversy exceeds fifty dollars, the service of the summons ten days before its return day shall authorize a trial and judgment (*).

SEC. 4046. Upon the return of a summons duly served, the parties shall be entitled to three hours after the time fixed for appearance in said summons, and neither party shall be bound to wait longer for the other.

(*) See *Woolford v. Harrington*, 2—85.

SEC. 4047. If the justice be engaged in other official business upon the return day of such summons or other process, he may postpone proceedings in the case until such business is finished.

SEC. 4048. If, from any cause, the justice is unable to attend the trial at the time fixed, or if a jury be demanded, such justice may adjourn the case for a period not exceeding three days, but shall not make more than two adjournments for that cause.

SEC. 4049. On the calling of an action for trial, if the summons has been duly served, the defendant shall put in his defense, and the plaintiff his reply, if a reply be necessary, and the trial forthwith proceed, unless the court give further time or grant a continuance.

SEC. 4050. The pleadings in the action may be written or oral, and without verification, but, if oral, it shall be the duty of the justice of the peace to write down the substance thereof in his docket, and all cross demands or set-offs shall be made, if at all, at the time the answer is put in (†).

SEC. 4051. The original or a copy of all written instruments upon which a cause of action or set-off is founded shall be filed with the claim founded thereon, or a sufficient reason given for not doing so.

SEC. 4052. Either party may obtain a postponement of the cause not exceeding thirty days, on account of the absence of evidence, by filing an affidavit like that required in the circuit court (g), subject to such terms as the court may impose.

SEC. 4053. The party who shall apply for such postponement shall, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be then taken to be used on the trial of the cause.

SEC. 4054. After the parties appear and the issues have been made up, the matters in controversy may be submitted by them to the justice. But if a jury shall be demanded by either party, the justice shall order a jury to be forthwith summoned and impaneled to try the action. Such jury shall be composed of six jurors, but a less number may be agreed upon by the parties.

SEC. 4055. In the formation of such jury each party shall be entitled to three peremptory challenges, and any deficiencies in the number of jurors summoned, arising from any cause, may be supplied by summoning others in their stead.

SEC. 4056. The justice shall administer to each juror an oath well and truly to try the matter in controversy between ———, plaintiff, and ———, defendant, and a true verdict give according to the evidence, unless discharged by the justice.

SEC. 4057. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly, in their presence, and they must all agree to the verdict.

SEC. 4058. If a witness, on being produced, shall be objected to as incompetent, or his testimony, when offered, as irrelevant, such objections shall be heard and determined by the justice.

SEC. 4059. Every person offered as a witness, before any testimony shall

(†) It is not necessary to verify pleadings in a justice's court, either written or oral; nor when amended on appeal in the circuit court. *Shinn v. Tucker*, 37—580.

(g) For requirements of affidavit, see SEC. 5108.

be given by him, shall be duly sworn that the evidence he shall give relating to the matter between ———, plaintiff, and ———, defendant, shall be the truth, the whole truth, and nothing but the truth.

SEC. 4060. Either party may examine the other on oath, and, for that purpose, may cause him to be summoned to attend the trial, if he resides in the county, or, if he resides out of the county, may file written interrogatories with the court or magistrate before whom the trial is to be had, together with an affidavit that he believes the answers to them are necessary to his obtaining justice, and cause a copy of said interrogatories to be delivered to the party required to answer them, who shall make out, swear to and file with such court or magistrate, on or before the day of trial, a plain, direct response to the interrogatories, which may be read by either party.

SEC. 4061. The court shall render judgment against the party who refuses to attend and be examined when summoned two days before the trial, or to make proper responses to interrogatories when a copy shall have been delivered to him three days before the trial, when he resides within fifty miles of the place of trial, and one additional day for every thirty miles he may reside therefrom; but the court may grant further time for attending or answering.

SEC. 4062. The last two sections shall apply to circuit courts upon the trial of appeals from judgments of justices of the peace.

SEC. 4063. When the jurors shall have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

SEC. 4064. Whenever a justice shall be satisfied that a jury sworn in a cause before him, after having been out a reasonable time, can not agree on their verdict, he may discharge them, and shall issue immediately a new summons for another to appear, at a time therein fixed, not more than three days distant, unless the parties consent that the justice may render judgment upon the evidence already before him, which, in such case, he may do; or, unless they consent that the new trial, upon a new hearing of the evidence to be adduced by the parties, shall be by the justice.

SEC. 4065. If the plaintiff fails to appear by himself, his agent or attorney, on the return day of the summons, or at any other time fixed for the trial, the justice may dismiss the action for want of prosecution, except in the case provided for in the next section (*).

SEC. 4066. When the suit is founded on an instrument of writing purporting to have been executed by the defendant, in which the demand of the plaintiff is liquidated, if the signature of the defendant is not denied under oath, and if the instrument has been filed with the justice previous to the day for appearance, he may proceed with the cause whether the plaintiff appear or not, and such instrument of writing shall be competent proof in the case.

SEC. 4067. In the case provided for in the last section, if the defendant does not appear in obedience to the summons, judgment shall be rendered against him for the amount of the plaintiff's claim.

SEC. 4068. When the plaintiff's claim is not founded on such written instrument, and the defendant does not appear, the justice shall proceed to hear the allegations and proofs of the plaintiff, and shall render judgment thereon

(*) See *Slaver v. Shell*, 24—122.

for the amount to which he shows himself entitled, not exceeding the amount claimed in the action.

SEC. 4069. In the cases contemplated in the last two sections, if the defendant has previously filed a set-off, founded on a written instrument purporting to have been signed by the plaintiff, calling for a certain sum, if the signature of such plaintiff is not denied under oath, the justice shall allow such set-off in the same manner as if the defendant had appeared, and shall render judgment accordingly.

SEC. 4070. Judgment of dismissal for want of prosecution, or judgment by default, may be set aside by the justice at any time within ten days after being rendered, if the party applying therefor can show a satisfactory excuse for his default, and a meritorious cause of action or meritorious defense, whereupon a new day shall be fixed for trial, and notice given to the opposite party; and any execution which may in the meantime have been issued shall be recalled in the same manner as in cases of appeal, and the cause shall proceed to trial as though no such judgment had been taken.

SEC. 4071. A new trial or rehearing may be granted by a justice of the peace (except on trial by jury), upon motion made within ten days after a judgment or final order has been made or rendered, of which motion notice shall be given to the opposite party.

SEC. 4072. No motion for a new trial or a rehearing, in a cause tried by a jury, shall be entertained by a justice of the peace. *Ib.*, secs. 24-41.

JUDGMENT AND PROCEEDINGS INCIDENT THERETO.

SEC. 4073. In cases of dismissal for want of prosecution, confession, or on the verdict of a jury, the judgment shall be rendered and entered upon the docket forthwith. In all other cases the same shall be done within three days after the cause is submitted to the justice for final decision (*).

SEC. 4074. A set-off or counter-claim, though exceeding in amount the jurisdiction of the court, may be used to bar and extinguish the demand of the plaintiff; but no judgment shall be rendered in favor of the defendant for the excess, unless such excess is within the limits of the court's jurisdiction as to amount. The judgment shall ascertain the amount due to the plaintiff, and give him a credit therefor on the claim used as a set-off or counter-claim.

SEC. 4075. Mutual judgments between the same parties, rendered by the same or different justices, may be set off against each other.

SEC. 4076. When rendered by the same court, the justice shall strike the balance as it appears from the judgments on his docket, and issue executions therefor in favor of the party to whom the same appears to be due.

SEC. 4077. If the judgment proposed to be set off was rendered by another justice, the party offering it must obtain a transcript thereof, with a certificate of the justice who rendered it indorsed thereon, stating that no appeal has been taken, and that the transcript was obtained for the purpose of being used as a set-off in that case; but such transcript shall not be given until the time for taking an appeal has elapsed.

(*) Where a justice of the peace fails to render judgment upon the verdict of a jury at the time when the verdict is returned, he, or his successor in office, may render such judgment at any subsequent time, *nunc pro tunc*. *Adams v. Thompson, etc.*, 12-670.

SEC. 4078. The justice so giving a transcript shall make an entry in his docket, and all other proceedings in his court shall be stayed.

SEC. 4079. When such transcript is presented to the justice who has rendered a judgment between the same parties as aforesaid, if execution has not been issued on the judgment rendered by him, he shall strike a balance between the judgments, and issue execution for such balance.

SEC. 4080. If, at the time of filing such transcript, execution has already issued, the justice of the peace shall also issue execution on the transcript filed with him, and deliver it to the same officer who has the other execution; and such officer shall treat the lesser execution as so much cash collected on the larger, and proceed to collect the balance then found due.

SEC. 4081. When the judgment is allowed to be set off, as in this act provided, the transcript thereof shall be filed among the papers of the case in which it is so used, and the proper entry made in the justice's docket. But if the justice refuses the judgment as a set-off, he shall so certify on the transcript, and return it to the party who offered it, and, when filed in the office of the justice who gave it, proceedings may be had by him in the same manner as if no such transcript had been certified by him.

SEC. 4082. The costs in suits where mutual judgments have been obtained shall not be set off, unless the balance of cash actually collected on the larger judgment be sufficient to pay the costs of both judgments, and such costs shall be paid therefrom accordingly.

SEC. 4083. The rules and proceedings governing confessions of judgment, as the same may apply to the circuit courts, apply to justices' courts (h). *Ib.*, secs. 42-52.

SEC. 4084. If any sum be found in favor of a party, either by verdict of a jury or upon a hearing of the cause before a justice, exceeding the sum for which the justice is authorized to give judgment, such party may remit and release the excess, and take judgment for the residue; but shall never thereafter be allowed to institute any suit for the recovery of such excess so remitted and released. *Ib.*, sec. 55.

PROCEEDINGS TO RESTORE LOST DOCKET ENTRIES, ETC.

SEC. 4085. Whenever the dockets, entries and papers, or any or either of them, of any justice of the peace shall have been or may hereafter be lost or destroyed, any person interested in any such lost dockets, entries, or papers, may have such entry restored on the docket of the justice making the same, or his successor in office, or may have such paper or papers supplied by the justice with whom the same were filed, or his successor in office, to take effect and be in force as if never lost or destroyed, by filing with such justice, or his successor in office, a petition, verified by the affidavit of himself, his agent or attorney, setting forth, as near as he can, a particular description of such lost or destroyed entry or paper, and if a judgment, note or bond, stating the amount due thereon, with the rate of interest, and date, as near as may be, when the interest began to run; that the same has not been paid, vacated, or in any manner satisfied or discharged, and causing a summons to be issued thereon, made returnable and served as in the case of ordinary suits before a justice.

(h) For mode of confessing judgments, see SECS. 5185-5187.

SEC. 4086. Upon the return day of said summons, if it shall appear that service thereof has been duly made, and the persons summoned shall fail to appear, and the justice shall be satisfied of the truth of such petition, judgment by default shall be rendered thereon, restoring such docket entry, or supplying such papers as may have been lost, in all which proceeding the plaintiff shall pay all the costs; but if the defendant in said petition, or any person as his agent, or attorney, shall appear, and on oath deny the statements or any material part thereof, the justice shall cause the facts in issue to be tried as in other actions; and if judgment shall be given for the plaintiff, he shall recover all his costs.

SEC. 4087. Executions and all other process necessary and proper in other judgments and proceedings before justices shall be issued for the enforcement of any such lost or destroyed judgment or papers, with the same effect as if the same had not been lost or destroyed. *Act March 17, 1879.*

STAY OF EXECUTION.

SEC. 4088. The execution upon a judgment rendered by a justice of the peace may be stayed in manner and form as follows: *Provided*, that the stay upon all sums under said jurisdiction shall be three months.

SEC. 4089. If all the parties agree upon any other period, the stay shall be for the time so agreed upon.

SEC. 4090. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, not being a party to the judgment, must, within ten days after the rendering of the judgment, enter into an obligation before the justice to the adverse party, in a sum sufficient to secure the payment of the judgment, conditioned to be void on payment of such judgment at the expiration of the stay.

SEC. 4091. Such obligation must be signed by the party entering into the same, and be attested by the justice before whom it may be taken, and shall have the same force and effect as a judgment rendered by a justice of the peace, and it may be in the following form:

"I, _____, do acknowledge myself indebted to _____ in the sum of _____ dollars, to be void upon this condition:

"Whereas, _____ obtained a judgment before _____, a justice of the peace of _____ township, in the county of _____, on the _____ day of _____, 18—, against _____. Now, if such judgment shall be paid at the expiration of _____ months from the time it was rendered, this obligation shall be void.

"Approved.

_____, J. P."

And the justice shall file such obligation among the papers in the case, and make a note in his docket of the day and date thereof.

SEC. 4092. If the plaintiff or his agent will make oath before the justice rendering the judgment that he has reason to believe that the defendant is secreting his property, or is putting it out of his hands for the purpose of defrauding his just creditors, and that he verily believes the debt will be lost if execution be not immediately issued, in all such cases the justice shall immediately issue execution on such judgment, whether the ten days allowed in this act for entering into obligation for the stay of execution have expired or not.

SEC. 4093. If any plaintiff, when execution has been stayed, will satisfy the justice before whom an obligation for such stay may have been entered into, by affidavit or evidence, that such obligation, or the security therein, is insufficient, and that, unless execution be immediately issued on such judgment, he will be in danger of losing his debt, such justice shall immediately issue execution, regardless of the stay.

SEC. 4094. In all cases where execution shall be stayed on any judgment rendered by a justice of the peace, such judgment shall be a lien upon all the personal property subject to execution belonging to the defendant at the time of the rendition of the judgment (*). *Act April 29, 1873, secs. 56-62.*

SEC. 4095. If, at the expiration of the stay, any judgment be not paid, the execution shall be issued against both principal and security, and, if the principal do not satisfy the execution, and the officer can not find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and, in his return, shall state what amount of the money collected by him on the execution was collected from the bail, and the time the same was received.

SEC. 4096. After the return of such execution, the bail shall be entitled, upon motion, to a judgment before the justice for the amount collected from him in satisfaction of such execution, with interest thereon at the rate of ten per centum per annum, and the return of the officer shall be evidence of the amount of money paid by the bail.

SEC. 4097. No such motion shall be made after the expiration of four months from the return day of such execution.

SEC. 4098. If a judgment be stayed in the manner hereinbefore prescribed, after an execution shall have been issued thereon, the justice shall revoke said execution in the same manner and with like effect as he is hereinafter directed to revoke an execution after an appeal has been allowed.

SEC. 4099. No stay shall be allowed in the cases mentioned in section 3028, and in the cases mentioned in that section in which a stay is not allowed the justice shall note the same on his docket on the day of the rendition of the judgment. *Ib., secs. 63-67.*

FILING TRANSCRIPT.

SEC. 4100. Every justice, on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall, upon payment of costs thereon, give to such person a certified copy of such judgment, and the clerk of the circuit court of the same county in which the judgment was rendered shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the circuit court for judgment and decrees, and shall note therein the time of filing such transcript.

SEC. 4101. No such transcript shall be filed, and no execution shall be sued out of the circuit court on such judgment, until an execution shall have been issued by a justice and returned that the defendant has no goods or chattels whereon to levy the same (†).

(*) The lien is confined to the defendant's personal property in the township in which the judgment was rendered. *Carroll v. Gillespie*, 41-468.

(†) See *Massey v. Gardenhire*, 12-638; *State v. Norris*, 19-247; *Hunt v. Weiner*, 39-70.

SEC. 4102. Every such judgment, from the time of filing the transcript thereof, shall be a lien on the real estate of the defendant in the county, to the same extent as a judgment of the circuit court of the same county, and shall be carried into execution in the same manner and with like effect as the judgments of such circuit courts (*). *Ib.*, secs. 68 and 69.

EXECUTION (†).

SEC. 4103. Executions for the enforcement of judgments in a justice's court, except when filed in the clerk's office of the circuit court of the county in which the judgment was rendered, may be issued by the justice before whom judgment was rendered, on the application of the party entitled thereto, at any time within five years from the entry of the judgment, but not afterward.

SEC. 4104. Such execution shall be against the goods and chattels (i) of the person against whom the same is issued, and shall be directed to any constable of the county. It must be dated as on the day on which it is issued, and made returnable within thirty days thereafter, and may be substantially in the form used in the circuit court.

SEC. 4105. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, an account of debt, damages and costs, and of the fees due to each person, separately, and the person receiving such execution shall indorse thereon the time of receiving the same.

SEC. 4106. In case the defendant resides out of the township where the judgment was rendered, or has not sufficient goods and chattels therein to satisfy such judgment, the constable to whom the execution is directed may levy the same upon the goods and chattels of the defendant, in any township in said county where the defendant resides, or where his goods and chattels may be found.

SEC. 4107. Whenever a justice of the peace in any township before whom a judgment has been obtained against any person shall be absent from his office, so that he can not be found, or shall have resigned or died, and no successor been appointed, or when there is judgment on the docket against such justice, it shall be the duty of any other duly qualified and acting justice of the peace in said township, or in said county, at the request of the plaintiff, or his attorney or agent, or of the constable or other officer having the collection of the judgment, to issue an execution upon said judgment.

SEC. 4108. It shall be the duty of every justice of the peace before whom a judgment has been obtained, whenever he is about to be absent from his township or county for more than ten days, or has resigned and his successor not been appointed, to deposit, or cause to be deposited, his docket with the nearest justice of the peace in his township or county; and when so deposited it shall be lawful for the justice with whom the docket is deposited, upon application as provided in section 4107, to issue an execution upon any judgment which appears upon said docket unsatisfied against any person. *Ib.*, secs. 53, 54, 71, 72, 76, 77.

(*) See *Petray v. Howell*, 20—615.

(†) A justice has control of an improper or improvident execution issued by him, and may recall and quash it. *Scanland v. Mixer*, 34—354.

(i) For method of proceeding where defendant claims that property is exempt from execution, see SECS. 3006-3013.

SEC. 4109. When a justice shall issue an execution upon a judgment rendered upon the docket of another justice, said execution shall be in the following form:

COUNTY OF _____, } ss.
 _____,

The State of Arkansas to any constable of the township of _____, greeting:

Whereas, it appears from an examination of the docket of _____, a justice of the peace in and for the township of _____, in the county of _____, in the State of Arkansas, that _____, on the _____ day of _____, 18—, obtained judgment before said justice against _____ for _____ dollars for his debt (or damages), and _____ dollars for his damages, and also _____ dollars for his costs; and, whereas, an execution has been ordered out on said judgment by said _____ (or his attorney, agent or constable charged with the collection of the same, as the case may be), which judgment bears interest at the rate of _____ per cent. on debt and damages from its date: You are therefore commanded to levy the same of the goods and chattels of the said _____ according to law. You are further commanded to return this writ to the undersigned justice within thirty days from its date.

Given under my hand this _____ day of _____, 18—.

_____, J. P.

SEC. 4110. Such execution shall be directed to the constable of the township where the justice resides, unless when it is otherwise specially provided, and shall be dated on the day it is issued, and shall be made returnable in thirty days after its issuance.

RENEWAL OF EXECUTION.

SEC. 4111. When an execution is issued and returned not satisfied, it shall be the duty of the justice to renew such execution by indorsement thereon, signed by him and dated when the same is made.

SEC. 4112. Every such indorsement shall renew the execution in full force, in all respects, for twelve months and no longer. An entry of such renewal shall be made in the docket of the justice. *Provided*, that such execution so renewed shall be enforced at any time at the instance of the plaintiff.

SEC. 4113. If part of such execution has been satisfied, the indorsement of renewal shall express the sum due thereon. *Ib.*, secs. 73, 75, 78-80.

SALES UNDER EXECUTION.

SEC. 4114. The constable, after taking goods and chattels into his custody by virtue of an execution, shall without delay give public notice, by at least three advertisements put up in three public places in the township, of the time and place, when and where, they will be exposed to sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 4115. At the time and place so appointed, if the goods and chattels be present for the inspection of bidders, the officer shall expose the same for sale at public vendue, for cash in hand (†).

(†) A sale in the absence of the property is void. *Kennedy v. Clayton*, 29-270.

SEC. 4116. He shall return the execution and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto. *Ib.*, secs. 81-83.

SEC. 4117. No real estate shall be levied upon or sold by virtue of any execution issued from a justice's court (k). *Ib.*, sec. 122.

PAYMENT TO CONSTABLE AND NOT TO JUSTICE.

SEC. 4118. The constable of the township shall receive all money that may be tendered to him in payment of any judgment obtained before a justice of the peace of such township, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, and the payment shall be valid against the judgment; and, upon the production to the justice of the receipt therefor, shall be credited thereon.

SEC. 4119. It shall be the duty of every justice of the peace, on issuing any process in any civil case against the defendant, to indorse on the back thereof the amount of plaintiff's demand, together with all the costs which may have accrued in said suit up to that period; and the defendant in such action may pay the same, and thereupon it shall be the duty of the constable in whose hands said process may be to make an indorsement on the same, or the back thereof, and return the same to the justice by whom it was issued; and said return shall be a bar to any further action in said suit.

SEC. 4120. The person entitled to the money paid shall have the like remedies against the constable and his securities for the recovery thereof as if the money had been collected by the constable on execution.

SEC. 4121. No payment of money upon a judgment made to a justice, either before or after execution thereon, shall be valid against such judgment, nor shall said justice be authorized or empowered to collect and receipt for the same (l). *Ib.*, secs. 85, 87 and 119.

NO TRIAL OF RIGHT OF PROPERTY.

SEC. 4122. No trial of the right to any property levied upon by a constable shall be had before such constable or a justice, but this act shall not bar the claimant of such property of his right to bring replevin therefor in the court having jurisdiction to try the same. *Ib.*, sec. 123.

OFFER TO COMPROMISE, ETC.

SEC. 4123. After an action for the recovery of money is brought in a justice's court, the defendant may offer to compromise (m) or to confess judgment (n) in the manner prescribed and with the same effect as he could or might do in the circuit court, and be entitled to all the benefits to be derived therefrom to the same extent as on similar proceedings in the circuit courts (o). *Ib.*, sec. 121.

(k) Nor leases of land, nor improvements on public lands. SEC. 3002.

(l) Justices are not allowed to collect fines, penalties or forfeitures. SEC. 5861.

(m) For law in relation to offer to compromise, see SECS. 5215-5217.

(n) For law in relation to offer to confess judgment, see SECS. 5221, 5222.

(o) A controversy may be submitted without suit, see SECS. 5218-5220.

PROCEEDINGS IN REPLEVIN AND ATTACHMENT.

SEC. 4124. The provisions of this chapter are not intended to govern the proceedings of justices' courts in replevin (p) and suits by attachment (q) and garnishment; but in such actions the rules of proceedings now in force, or which may hereafter be in force, in the circuit courts, so far as they are applicable, shall govern justices' courts (*). *Ib.*, sec. 120.

SEC. 4125. Whenever the constable, to whom any order of attachment issued by any justice of the peace of this state shall be directed, can find no personal property upon which to levy the same, he may and shall levy such order upon any lands, tenements, town lots, interest in or equity of redemption in any real property belonging to the defendant in such attachment subject to execution by the laws of this state, and make his return accordingly, describing in said return the property so levied upon.

SEC. 4126. In all cases in suits by attachment in which lands, tenements, town lots, interest in or equity of redemption in any real property shall have been levied upon as provided for in the preceding section, the plaintiff, if he obtain judgment therein, shall be entitled to a transcript of the judgment and proceedings in said cause, and, upon the filing of such transcript in the office of the clerk of the circuit court of the county in which such judgment was obtained, the same shall be entered in the docket of the circuit court for common law judgments, and shall thenceforth have the same force and effect of a judgment rendered in said circuit court, upon which an order of sale shall be issued by the clerk of said court, directed to the sheriff of the county, under which the property so seized and levied upon and condemned to be sold by said judgment, shall be sold in the same manner and with the same notice as sales of real property under execution are made. *Provided*, no such sale shall be made until the plaintiff shall execute bond to the defendant in the manner now prescribed by law (†).

SEC. 4127. This act shall relate and apply to all suits by attachment before justices of the peace, heretofore brought or now pending, in which any real estate or interest in or equity of redemption of any lands or tenements may have been levied upon and seized by any constable or sheriff by virtue of any such order, and sales made thereunder shall have the same validity, force and effect as in cases brought after the passage of this act. *Act Jan. 23, 1875.*

PROCEEDINGS AGAINST CONSTABLES.

SEC. 4128. In the following cases the justice shall, upon the demand of the party injured, or his agent, issue a summons against the constable to whom

(p) For mode of proceeding in action of replevin, see *chap. 128*.

(q) For grounds of attachment, etc., see *chap. 9*. If a defendant in attachment whose property has been attached can not be personally served he may be constructively summoned, as provided in *SECS. 4989-4993*. As to publication of legal notices, see *SECS. 4356-4363*.

(*) The affidavit in attachment or replevin answers the purpose of a complaint or statement of the cause of action. *Hanner v. Bailey*, 30—681; *Tignor v. Bradley*, 32—781.

(†) This act is constitutional. See *Bush v. Visant*, 40—124. A justice of the peace has no jurisdiction to try title to land, and should refuse an interplea for land on which an attachment from his court has been levied, and proceed to judgment without reference to the title. *Cunningham v. Holland*, 40—556.

any execution has been delivered, or who has received any money upon any judgment of such justice, whether with or without execution:

First. If the constable fail to make return of the execution according to the command thereof.

Second. If he make a false return.

Third. If he fail to have any money collected by him on execution before the justice on the return day thereof, ready to be paid over to the party entitled thereto, or the receipt of such person therefor.

Fourth. If he fail to pay over on demand to the person entitled thereto, or his agent, any money received by him in payment of any judgment (r).

SEC. 4129. Such summons shall require the constable to appear before the justice at a place and time to be specified therein, not exceeding ten days, and show cause why an execution shall not issue against him for the amount due upon the execution placed in his hands, or for the amount received by him upon the judgment, according to the nature of the case.

SEC. 4130. The summons shall be served at least four days before the return day thereof, and may in other respects be executed in like manner as an original summons.

SEC. 4131. If the constable shall fail to appear, or, appearing, fail to show good cause to the contrary, the justice shall render judgment against him for the amount due on the execution, or for the amount received by him without execution, according to the nature of the case, together with interest thereon at the rate of one hundred per centum per annum from the time such execution ought to have been returned, and from the time such money ought to have been had before the justice ready to be paid over to the parties entitled thereto, or from the time the money was received on the judgment without execution, or was demanded by the party or his agent.

SEC. 4132. All process issued against any constable shall be served and executed by a special deputy, who shall be appointed by the justice for that purpose, and have the same power to execute and return such process as a constable, and whose return shall be sworn to.

SEC. 4133. The party injured may proceed against the constable as before directed, or may institute a suit against him on his official bond; and in such suit he shall be entitled to the like recovery as upon a summons against the constable. *Act April 29, 1873, secs. 88-91, 93, 94.*

APPEAL (s).

SEC. 4134. Any person aggrieved by any judgment rendered by a justice of the peace, except a judgment of dismissal for want of prosecution, may, in person or by his agent, take his appeal therefrom to the circuit court. *Ib., sec. 95.*

SEC. 4135. No appeal shall be allowed unless the following requisites shall be complied with:

First. The applicant, or some person for him, shall make and file with the

(r) A summary judgment may be had against the constable and his sureties for like causes. SECS. 3957-3965. And for additional provisions relating to liability of, and summary proceedings against, constables, see SECS. 3061-3066.

(s) See *art. VII, sec. 42, Const.* For mode of appeal in criminal cases, see SECS. 2432-2439.

justice an affidavit that the appeal is not taken for the purpose of delay, but that justice may be done him (†).

Second. The appeal must be taken within thirty days after the judgment was rendered, and not thereafter.

Third. The applicant, or some person for him, together with one or more securities, to be approved by the justice, must, within the time prescribed in the second clause of this section, enter into an obligation before the justice to the adverse party, in a sum sufficient to secure the payment of such judgment and the costs of the appeal, conditioned that the applicant will prosecute his appeal with due diligence to a decision; and if, on such appeal, the judgment of the justice be affirmed, or if, on a trial anew in the circuit court, judgment be given against him, that he will pay such judgment, and if his appeal be dismissed, that he will pay the judgment of the justice, together with the costs of the appeal; such obligation shall be signed by the parties entering into the same, and shall be attested by the justice. *Ib.*, sec. 97, as amended by act March 16, 1883.

SEC. 4136. Either party may appeal without giving bond, as required in this act; but such appeal shall not operate as a suspension of the proceedings upon the judgment appealed from, and no certificate shall be given the appellant stating that an appeal in the cause has been allowed, and no execution issued be recalled.

SEC. 4137. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same, and immediately make an entry of such allowance in his docket, and all further proceedings on the judgment shall be suspended by the allowance of the appeal; and if, in the meantime, execution shall have issued, the justice shall give the appellant a certificate that an appeal in the cause has been allowed, except as provided in the last preceding section no such certificate shall be issued.

SEC. 4138. On such certificate being presented to the constable holding the execution, he shall forthwith release the property taken in execution, and return the said execution properly indorsed.

SEC. 4139. On or before the first day of the circuit court next after the appeal shall have been allowed, the justice shall file in the office of the clerk of such court a transcript of all the entries made in his docket relating to the cause, together with all the process and all the papers relating to such suit (*).

SEC. 4140. Upon the return of the justice being filed in the clerk's office, the court shall be in possession of the cause and shall proceed to hear, try and determine the same anew on its merits, without any regard to any error, defect or other imperfection in the proceedings of the justice.

SEC. 4141. No appeal from a justice of the peace to the circuit court shall be dismissed or stricken from the docket when any specific sum shall be found by said justice: first, because the justice has not rendered a formal judgment upon his record or docket; second, because he has not entered upon his docket

(†) An affidavit for appeal is a prerequisite to the granting of the appeal. *Merrill v. Maness*, 19—647. An informal affidavit may be amended in the circuit court. *Young v. King*, 33—745. If a justice omits to sign his name to the jurat to an affidavit for appeal, he may be compelled to sign it by rule of court. *Guy, McClellan & Co. v. Walker & Johnson*, 35—212.

(*) It is the duty of the appellant to see that the transcript is filed as required, and if he fails to do so, the circuit court may, in its discretion, dismiss or affirm for failure to prosecute the appeal. *Smith v. Allen*, 31—268; *McGehee v. Carroll & Jones*, *Ib.*, 550; *Hughes v. Wheat*, 32—292.

that an appeal was prayed for and granted. But if all the requisites, as they are required in this act for the taking of appeals, be substantially complied with, the cause shall be deemed to be in court and be subject to be tried anew upon its merits.

SEC. 4142. In all cases of appeal from justices of the peace for trial *de novo*, the justice before whom the cause was tried may be required, whether in or out of office, to appear before such court upon the motion of either party, and amend any defect or omission, either in form or substance, according to the right and truth of the case, in the proceeding had before him not the fault or omission of either of the parties, so that no such appeal shall be dismissed for want of jurisdiction because of the fault or neglect of the justice to mark any paper filed, for any defect in the affidavit or obligation for the appeal, or order granting the appeal, or any defective entry made, or informal judgment rendered by him.

SEC. 4143. Upon the appeal being made and allowed, the circuit court may, by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned.

SEC. 4144. If a justice shall fail to allow an appeal in a cause where the same ought to be allowed, the circuit court, or the judge thereof in vacation, on such fact satisfactorily appearing, may, by rule and attachment, compel the justice to allow the same and return his proceedings in the suit, together with the papers required to be returned by him.

SEC. 4145. Whenever the court is satisfied that the return of the justice is substantially defective, the court may, by rule and attachment, compel him to amend the same (†).

SEC. 4146. No appeal allowed by a justice shall be dismissed because there is no bond or obligation, or because the bond or obligation given is defective, if the appellant will, before the motion to dismiss is determined, enter before the circuit court into such obligation as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect or omission. *Provided*, that any person appealing without bond and a suspension of the proceedings in the justice's court shall not be required to enter into bond before the circuit court, as in this section required.

SEC. 4147. All appeals allowed ten days before the first day of the term of the circuit court next after the appeal allowed shall be determined at such term, unless continued for cause.

SEC. 4148. If the appeal be not allowed on the same day on which the judgment is rendered, the appellant shall serve the appellee, at least ten days before the first day of the term at which the cause is to be determined, with a notice in writing notifying him of the fact that an appeal has been taken from the judgment therein specified. The notice may be served in the same manner as an original summons, and when the appellee does not reside in the county, and has no agent in the suit therein, the service may be by leaving a copy of such notice with such justice.

SEC. 4149. If the appellant fail to give notice of his appeal in a cause, when such notice is required, the cause may, on the application of the appellee, be continued, as a matter of course, until the succeeding term; but no appeal

(†) See *Guy, McClellan & Co. v. Walker & Johnson*, 35—212.

shall be dismissed for want of such notice, and, if the cause be continued, no further notice shall be required.

SEC. 4150. Nothing in the preceding section shall be so construed as to prevent the appellee from going into trial without such notice.

SEC. 4151. The same cause of action, and no other, that was tried before the justice shall be tried in the circuit court upon the appeal, and no set-off shall be pleaded that was not pleaded before the justice, if the summons was served on the person of the defendant (*).

SEC. 4152. If the party appealing moves to dismiss in the circuit court, or fails to prosecute his appeal, it shall be at the option of the appellee either to proceed to trial on the appeal or have judgment rendered for the amount of the original judgment and costs where it was in his favor, or in bar of the original judgment where it was against him.

JUDGMENT ON APPEAL AND PROCEEDINGS THEREON.

SEC. 4153. In all cases of appeal from a justice of the peace, if the judgment of the justice be affirmed, or if, on trial anew in the circuit court, the judgment be against the appellant, such judgment shall be rendered against him and his securities in the appeal bond (t).

SEC. 4154. If, an execution being issued upon such judgment, the principal shall not pay such execution, and the officer can not find sufficient property belonging to such principal to satisfy the same, such execution shall be enforced against the securities, and the officer shall specify in his return by whom the money was paid, and the time thereof.

SEC. 4155. After the return of an execution, satisfied, in whole or in part, out of the property of a security, such security shall be entitled to a judgment, upon motion, against the principal, for the amount so paid by him, together with interest thereon at the rate of ten per centum per annum from the time of payment (u).

SEC. 4156. Such motion must be made within one year after the return day of the execution; and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated. *Ib.*, secs. 98-118.

(*) See *Hall v. Doyle*, 35-445.

(t) For the regulation of costs in circuit courts on appeals, see SECS. 1060, 1061.

(u) For method of proceeding in such case, see SECS. 3957-3962.

CHAPTER XCII.

LANDLORD AND TENANT (a).

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 4173. Judgment in such case.
 4174. What tender by tenant will bar recovery in such case.
 4175. Effect of judgment and non-payment thereof, for six months.
 4176. Rights of a mortgagee of such lease.

SECTION 4157. The executor or administrator of any tenant for life who shall have demised any lands or tenements so held, and shall die on or before the day when any rent on such demise shall become payable, may recover:

First. If such tenant for life die on the day the rent becomes due, the whole rent.

Second. If he die before the day on which the rent becomes due, such proportion of the rent as shall have accrued before his death.

SEC. 4158. Every person entitled to any rent, dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action for the recovery of all arrears of such rent that may be due and unpaid at the death of such person as he might have if such person were in full life.

SEC. 4159. Every person having, in right of his wife, any freehold estate in any rents may, if such rent is due and unpaid at the time of his wife's death, have the same remedy by action for the recovery of such arrears as he might have if the wife were in full life.

SEC. 4160. Any person having any rent due upon any lease for life may have the same remedy by action for the recovery thereof as if such lease was for years.

SEC. 4161. The executor or administrator of any person to whom any rent shall have been due and unpaid at the time of the death of such person may have the same remedy by action against the tenant, his executor or administrator, for the recovery thereof that the testator or intestate might have had.

SEC. 4162. Every tenant on whom a summons in an action to recover the tenements by him held shall be served shall forthwith give notice thereof to the person, or the agent of the person, of whom such tenant holds.

(a) For landlord's lien, see SEC. 4433.

SEC. 4163. If any tenant shall give notice in writing of his intention to quit the premises held by him at a time specified in such notice, and shall not deliver up the possession thereof at such time, such tenant, his executor or administrator, shall from thenceforward pay to the landlord, his heirs or assigns, double the rent reserved during all the time such tenant shall so continue in possession of such premises.

SEC. 4164. Such double rent may be recovered by action in any court having jurisdiction thereof.

SEC. 4165. If any tenant for life or years, or if any other person who may have come into possession of any lands and tenements, under or by collusion with such tenant, shall willfully hold over the same after the termination of such term, and thirty days' previous notice in writing given requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession double the yearly rents of the lands or tenements so detained for all the time he shall keep the person entitled thereto out of possession.

SEC. 4166. There shall be no relief in equity against any recovery had at law under the preceding section.

SEC. 4167. A landlord may recover in an action a reasonable satisfaction for the use and occupation of any lands and tenements held by any person under an agreement not made by deed (b).

SEC. 4168. If a parol demise or other agreement not by deed, by which a certain rent is reserved, appear in evidence on the trial of such action, the plaintiff shall not, on that account, be barred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

SEC. 4169. Where lands or tenements are held and occupied by any person without any special agreement for rent, the owner of such lands or tenements, his executor or administrator, may sue for and recover a fair and reasonable compensation for such use and occupation (c).

SEC. 4170. Whenever a half-year's rent or more is in arrear from a tenant, the landlord, if he has a subsisting right by law to re-enter for the non-payment of said rent, may bring an action to recover the possession of the demised premises.

SEC. 4171. If a summons in such action can not be served in the ordinary mode provided by law, it may be served by affixing a copy thereof on a conspicuous part of the demised premises, where it may be conveniently read.

SEC. 4172. The service of the summons in such action shall be deemed and stand instead of a demand of the rent in arrear, and of a re-entry on the demised premises.

SEC. 4173. If, on the trial of such action, it is proved, or, upon judgment by default, it appears to the court by affidavit that the plaintiff had a right to commence such action according to the provisions of this act, he shall have judgment to recover the possession of the demised premises and costs of suit.

SEC. 4174. If the defendant, before judgment is given in such action, either tenders to the landlord or brings into court where the suit is pending all

(b) See *Fitzgerald v. Beebe*, 7—305; *Byrd v. Chase*, 10—602; *Tate v. McClure*, 25—168.

(c) Where the entry upon the lands of another is peaceable and the occupation acquiesced in, without any agreement, written or verbal, as to rent, the owner may bring an action for use and occupation. *Dell v. Gardner*, 25—124; *Bright v. Bostick*, 27—55.

the rent then in arrear and all costs, all further proceedings in the action shall cease.

SEC. 4175. If the rent and costs remain unpaid for six months after execution upon such judgment is executed, and no bill for relief in equity is filed within that time, the lessee and his assigns, and all other persons deriving title under the lease from such lessee, shall be barred from all relief in law or equity, except for error in the record or proceedings, and the landlord shall from thenceforth hold the demised premises discharged from the lease.

SEC. 4176. A mortgagee of such lease not in possession of such demised premises who, within six months after execution of any such judgment is executed, shall pay all rent in arrear, and all costs and the charges incurred by the landlord, and shall perform all the agreements which ought to be performed by the first lessee, shall not be affected by such recovery. *Rev. Stat., chap. 88.*

CHAPTER XCIII.

LANDS OF THE STATE.

- I. COMMISSIONER OF STATE LANDS.—Sec. 4177.
- II. SWAMP AND OVERFLOWED LANDS.—Sec. 4191.
- III. LANDS FORFEITED FOR TAXES.—Sec. 4243.
- IV. SEMINARY, SALINE AND INTERNAL IMPROVEMENT LANDS.—Sec. 4274.
- V. REAL ESTATE BANK LANDS.—Sec. 4279.
- VI. GENERAL PROVISIONS.—Sec. 4304.
- VII. COLLECTION OF CLAIMS DUE FOR STATE LANDS—SUITS RELATING THERE-
TO, ETC.—Sec. 4327.

I.—COMMISSIONER OF STATE LANDS.

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- 4177. Office of, continued.
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- 4184. Keeps all the books, plats, etc.
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- 4190. Reports and settlements.

SECTION 4177. The office of commissioner of state lands shall be continued, provided that the general assembly, at its next session, may abolish or continue the same in such manner as may be prescribed by law (*). *Sched. Const., sec. 24.*

SEC. 4178. Said commissioner, in addition to the oath of office required by chapter 113, shall take an oath that he will not, directly or indirectly, be engaged in the purchase of lands belonging to the state, to be sold by him during his continuance in office, and that he will not, directly or indirectly, engage in any speculation in swamp and overflowed lands, nor give information to any agent, friend, or secret or other partner, so as to secure the advantages of such information to himself, or any person, association or company, to the prejudice or exclusion of other persons (a).

SEC. 4179. He shall enter into bond to the state, with security, to be approved by the governor, in the sum of twenty thousand dollars, conditioned

(*) See SEC. 3097. The office of commissioner of state lands was created by act of July 15, 1868, under which he was appointed by the governor and held office for the term of four years. Under the present constitution, he is elected by the qualified electors of the state for the term of two years. See SEC. 2710; *Sched. Const., sec. 3.*

(a) For provisions punishing the commissioner for criminal neglect or violation of his official duties, see SECS. 1744, 1745.

that he will account for and pay over all moneys and property which may come into his possession, and that he will faithfully discharge all the duties of his office according to law. Said bond shall be filed in the office of the secretary of state. *Joint Res., April 12, 1869.*

SEC. 4180. Said commissioner shall be provided with an official seal, and shall authenticate therewith every official paper issued by him. *Act July 15, 1868, sec. 18.*

SEC. 4181. He shall open and keep his office at the seat of government of this state, and perform such duties as may be required by law. *Ib., sec. 1.*

SEC. 4182. He is authorized to appoint one clerk in his office to act as deputy, who shall take the oaths prescribed by law for his principal, which oaths shall be indorsed upon the letter of appointment, and said letter of appointment shall be filed in the office of the secretary of state; and said commissioner shall be responsible for all acts done by his deputy in the performance of his official duties. *Act March 23, 1871, sec. 3.*

SEC. 4183. The landed interest of this state shall be controlled by said commissioner; and he shall exercise the same control over the state lands, and dispose of them as provided by law for the disposition of such lands by the land agents. *Act July 15, 1868, sec. 1.*

SEC. 4184. He shall take possession and have charge of all the books, papers, evidences of title, plats and maps of all the internal improvement, seminary, saline and swamp and overflowed lands. *Ib., sec. 6.*

SEC. 4185. He shall also have the charge, control and disposition of all lands forfeited, or that may hereafter be forfeited, to or purchased by the state, for the non-payment of taxes, and said commissioner shall dispose of such lands as is or may be provided by law (b). *Ib., sec. 10.*

SEC. 4186. He shall proceed to complete all the books, papers, plats and maps delivered to him by the auditor relating to said lands, if any such be incomplete; and he shall make out for each township in which there are any of said lands township maps, in which he shall carefully class the same separately, each description making a class by itself.

SEC. 4187. Such maps or plats shall be kept in the office of such commissioner, and at all times during ordinary business hours be open to the examination of any person interested in or desiring to purchase any state lands.

SEC. 4188. He shall furnish to all persons applying therefor at his office copies of such plats or maps of any township in this state, showing the lands belonging to the state, their class, etc.; also, showing what lands, if any, in such township are subject to location under the homestead laws of the United States, and such other information as he may be in possession of as will facilitate such persons in selecting a location in this state. *Act July 15, 1868.*

SEC. 4189. In addition to the memorandum of sales or entry of lands to be made upon the maps or plats, said commissioner shall procure a well-bound book, in which he shall enter each location or purchase of lands, and in which he shall specify the tract sold, to whom sold, date of such sale, the price and how paid for. The certificates of entry granted by said commissioner shall always discriminate the class the lands belong to which were sold. *Act Jan. 12, 1853, secs. 15, 20.*

(b) He also has authority to purchase and sell the real estate bank lands. See Secs. 4279-4303.

SEC. 4190. The commissioner shall make out a detailed report of the transactions of his office at the end of each quarter of each fiscal year (§). *Act Jan. 13, 1857, sec. 16.*

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(*) The title of the state to the swamp and overflowed lands, granted to her by act of congress of September 28, 1850, accrued from the date of the act; and a title derived from the state will take precedence over a grant by the United States subsequent to that time. *Ringo v. Rotan's heirs*, 29—56.

(†) See chap. 114.

shall be governed by the rules, provisions and regulations in force at the time of such sale. *Act Jan. 12, 1853, sec. 7.*

Notice of Additional Confirmation—Price—Funds Receivable.

SEC. 4192. The commissioner of state lands shall give notice of any additional confirmation of swamp lands, by advertising the same for two insertions in some newspaper published in the county in which the lands are situate, if any there be, and also in some newspaper published at the capital of the state, setting out the lands as they are described in the list of confirmation or other list referred to in the law authorizing their sale, and notifying pre-emptors of their rights, and requiring all persons claiming the right of pre-emption upon any of said lands to come forward and prove their pre-emptions before the day of sale. *Act Dec. 13, 1875, sec. 7.*

SEC. 4193. He shall also state in such notice that all of said lands so confirmed to the state, which shall not be purchased under pre-emption or preference right within sixty days from the date of said notice, will be sold or offered by him, at public sale, to the highest bidder, at his office, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the first Monday after the expiration of the sixty days allowed pre-emptors within which to establish their pre-emptions and pay for their lands. *Act Jan. 13, 1857, sec. 12.*

SEC. 4194. Such notice shall state the day of the month and the year when the sale will take place, and that said lands will not be sold for less than one dollar per acre, payable in specie or in swamp land scrip, or other funds receivable by law for such lands. *Ib.*

SEC. 4195. At the time fixed in said notice for such public sale, the commissioner shall, at the front door of his office, proclaim aloud the commencement of the sale, and shall designate distinctly the lands by the proper numbers as he offers them at public sale, and shall offer the lands, if not fractional, in half-quarter sections, or quarter-quarter sections, to suit purchasers and enhance the value, but fractional quarter sections shall be offered without being divided; and the highest bidder for any land which shall be so offered, upon complying with his bid, by paying for the land at said sale, shall be the purchaser, and the commissioner shall grant to him a certificate of purchase therefor. *Provided*, that no such land shall be sold at less than the minimum prices established by law; and such sale shall continue from day to day until all of such lands shall have been sold or offered at public sale. *Ib.*

SEC. 4196. The commissioner shall not receive any application for any swamp and overflowed land which may hereafter be confirmed to the state, except from a pre-emptor, until after such land shall have been duly offered at public sale. *Ib., secs. 13, 17.*

WHEN SUBJECT TO ENTRY—FUNDS RECEIVABLE.

SEC. 4197. All lands not sold at the time appointed for such public sale shall be liable to be entered at any time thereafter for swamp land scrip, warrants, or other funds receivable by law therefor, at not less than one dollar per acre; and the commissioners shall give to the purchaser a certificate of such entry, in which he shall specify the lands entered, the amount to be paid there-

for to the state treasurer, the kind of payment to be made for said lands, whether in specie, swamp land scrip, or warrants, etc. He shall also note each entry on his township maps, and in his book to be kept for that purpose (†). *Ib.*, *secs.* 11, 12; *act Feb. 5, 1859*, and *act March 2, 1883*.

SEC. 4198. All tracts of swamp land which may be in the same township, and may be entered by the same person at one time, shall be embraced in one certificate. *Act Dec. 30, 1856, sec. 6*.

SEC. 4199. Every person paying swamp land scrip, warrants or other scrip or funds of the state receivable by law for such lands shall indorse his name on the back of the same, with the date of the payment thereof to the treasurer, which indorsement shall be attested by the treasurer, and the scrip warrants or other funds so transferred shall be equivalent to the amount of money therein called for on settlement by the treasurer with the auditor. *Act Jan. 12, 1853, sec. 21, and act Feb. 5, 1859*.

SEC. 4200. The treasurer shall not receive or cancel any such scrip or funds unless the same shall be indorsed as required in the preceding section. *Act Feb. 5, 1859*.

SEC. 4201. All swamp land scrip, auditor's warrants, or other evidences of indebtedness, now receivable for swamp and overflowed lands, which were issued for any particular land district in this state, shall be receivable in payment for the class of land specified therein, located in any district in the state. *Act March 5, 1875, sec. 4*.

Duplicate Certificates—When to be Issued.

SEC. 4202. It shall be the duty of the commissioner, on being furnished with proof deemed sufficient by him, to issue duplicate certificates of entries made by persons under any of the acts heretofore passed for the entry and sale of the swamp and overflowed lands; and in such cases he shall recite when such entry was made, by whom made, and the fact that such certificate was given by him in lieu of one averred and proved to be lost by such person applying for such duplicate; and in all cases the duplicate shall be deemed, taken and considered, for all and every purpose whatever, as in lieu and cancellation of said original certificate. *Provided*, that no such duplicate certificate of entry shall issue unless it shall appear, by the public records in his office, that such entry in fact existed.

SEC. 4203. Before any such duplicate shall be given or delivered by the commissioner, he shall require the person applying for the same to make and file a written recital and affidavit of the facts attending said loss, and such other evidence of the loss of such original as he can command, in the discretion of the commissioner.

SEC. 4204. The commissioner shall be authorized to issue, upon the duplicate hereby authorized to be issued, a patent, to the same effect as if said original had not been lost or mislaid. *Act Jan. 7, 1857*.

Assignment of Certificate of Purchase.

SEC. 4205. It shall be lawful for any person to assign and transfer certifi-

(†) See *Brewer v. Hall*, 36—334.

cates of purchase of swamp or overflowed lands, which assignment and transfer shall be in substance as follows:

For value received, I, ———, do assign and transfer to ———, and to his heirs and assigns, all my right, title, interest and claim to the within-described land.

Given under my hand this ——— day of ———, 18—.

Witnesses, ———.

Which shall be witnessed by two respectable subscribing witnesses, and proven or acknowledged in the manner authorized by law for deeds of conveyance. *Act Jan. 15, 1857.*

Holding and Refunding Certificates.

SEC. 4206. The holder of any certificate of purchase of swamp and overflowed lands from the swamp land commissioners or agents, or any person acting under their authority, who shall apply to the commissioner for a patent thereon, shall not be compelled to take a refunding certificate (g) for the amount paid for any tracts in the original certificate which shall appear to be not yet confirmed to the state, but, instead of a refunding certificate, may demand, and shall receive, from the commissioner a holding certificate in substantially the following form, to wit:

The State of Arkansas. No. —. Commissioner's Office, Little Rock, Ark., 18—. I, ———, commissioner of state lands, do hereby certify that ——— has this day presented and filed in this office certificate No. —, issued by ———, swamp land commissioners (or agent, as the case may be), to ———, dated the ——— day of ———, 18—, for the ——— in township ——— of the base line, in range ——— of the fifth principal meridian, containing ——— acres, which certificate I have redeemed by issuing a patent certificate, No. —, of even date herewith, for the ——— in said township and range, and by granting this certificate, showing the said ——— is entitled to re-enter the remainder of said land, to wit: The ——— in said township and range, which it appears is not yet confirmed to the state, and, should it not be hereafter confirmed, to entitle him to a refunding certificate for ——— dollars and ——— cents, the amount of money or scrip paid to said commissioners (or agent, as the case may be) for said land, as appears of record.

[Signed,]

_____,
Commissioner of State Lands.

SEC. 4207. The holder of such certificate shall be entitled to re-enter therewith, or receive a patent or refunding certificate thereon, in all respects as if the same was an original certificate from the swamp land commissioners or agents, or those acting under them.

SEC. 4208. The holders of refunding certificates which have been taken in adjusting titles to land, under existing laws, which land has not been confirmed, shall have the same right to purchase the land for which they hold

(g) By act of January 20, 1855, any purchaser or assigns holding a certificate issued by, or under authority of, the swamp land commissioners, might surrender the same and have patent, or refunding certificate, issued thereon.

refunding certificates, as is contemplated and provided for in this act. *Provided*, that this act shall not interfere with any person who is entitled to pre-emptions. *And provided, also*, that the holder of said refunding certificate has not withdrawn his scrip out of the treasury. *Act Feb. 17, 1859.*

SEC. 4209. In refunding on lands erroneously entered, the person entitled to a refunding certificate shall be entitled and restricted to the kind of funds paid in, whether the same be specie, scrip or warrants; and in the latter case the refunding warrant shall be subject to location on land at the same rate per acre that the warrant originally paid in specified. *Act Jan. 19, 1861.*

SEC. 4210. In all cases where it appears from the records of said commissioner's office that certificates of purchase for lands purchased before the sixth day of May, 1861, were surrendered to any person in charge of any of the land departments of this state after the fifth day of May, 1861, and before the eighteenth day of April, 1864, and pretended holding or patent certificates were issued therefor, the commissioner shall, upon application, issue valid certificates without further proof of loss of said original certificates. *Act March 23, 1871.*

SEC. 4211. All refunding certificates heretofore issued in pursuance of law by any legally authorized land agent or land commissioner of this state, and all such certificates that may hereafter be issued by the commissioner of state lands in pursuance of law for the refunding of any money certificates of indebtedness, or warrants of any kind, which have been paid to such agent, commissioner or the treasurer of this state for land erroneously sold by such agent or commissioner, shall be and the same are hereby made receivable at the office of the treasurer of this state in payment for a like quantity of the same class of land mentioned in such certificates. *Provided*, that nothing herein contained shall be so construed as to prevent the auditor from drawing his warrant on the treasurer, in favor of the holder of such refunding certificate, for the amount and kind of funds designated in such certificate in the manner now prescribed by law. *And provided, further*, that it shall be optional with the holder of such certificate to pay it for land, or to deliver the same to the auditor, and take the auditor's warrant on the treasurer for the amount and kind of funds specified in such certificates (a).

SEC. 4212. All refunding certificates so paid into the state treasury, as provided for in this act, shall have indorsed on the back thereof the name of the payee, attested by the treasurer.

SEC. 4213. The commissioner of state lands shall hereafter make quarterly reports to the auditor of all refunding certificates issued by him, stating when and to whom issued, for what amount and kind of funds. *Act March 18, 1881.*

PRE-EMPTION OR PREFERENCE RIGHT.

SEC. 4214. Any head of a family or other citizen of the State of Arkansas over the age of twenty-one years who has an improvement (*) on any of the swamp and overflowed lands, who shall, within sixty days after such lands are advertised by the commissioner, file his declaration in writing, setting forth

(a) A purchaser of swamp land, which had been duly approved to the state, but for which he has received no patent, is not entitled to a refunding certificate merely because the state has resold and patented it to another. His remedy is against the patentee for the land itself. *Smith v. Auditor*, 40—328.

(*) For meaning of "improvement," under the land system of this state, see *Simpson v. Robinson*, 37—132.

the fact that he claims said tract of land, to be described in such declaration, as a pre-emption right under the provisions of this act, with the commissioner, shall be entitled to a pre-emption right for the term of twelve months from and after the time of filing said declaration, and shall have a preference right to enter the same in any legal subdivision not to exceed one hundred and sixty acres, at the minimum price of such land, provided that no person who has already obtained a pre-emption of one hundred and sixty acres of such lands under existing or previous laws shall be entitled to the benefits of this act, and any person who has already obtained a pre-emption to a less quantity than one hundred and sixty acres shall only be entitled to a pre-emption to such quantity which, together with the pre-emption already obtained, will amount to one hundred and sixty acres. *Act Jan. 16, 1855.*

SEC. 4215. Any person who resides on, or who may hereafter reside on, or cultivate, any of the swamp and overflowed lands which may be confirmed to the state shall have a pre-emption right to one hundred and sixty acres, to be proved up according to existing laws. Every pre-emptor, after filing his declaration of pre-emption, shall, within twelve months after the date of such filing, or, in case the land has not been offered for sale, within sixty days after the same has been advertised by the commissioner, make proof before said commissioner, or before some justice of the peace, by two disinterested witnesses, that he resides on, or cultivates, or has an improvement on, the tract claimed (aa). *Act Jan. 13, 1857, sec. 13, and act Jan. 12, 1853, sec. 37.*

SEC. 4216. The entry of swamp and overflowed lands made in accordance with the fifth section of "An act to provide for the reclaiming of the swamp and overflowed lands donated to this state by the United States," approved January 6, 1851, are hereby approved and confirmed; and in all cases where such lands were entered before the old board of swamp land commissioners, under said section, and are still unconfirmed to this state, the person or persons so entering, or holding the certificate by assignment or transfer, shall have a preference right, provided the holder be a citizen of the state, to re-enter the said lands as soon as the same shall be confirmed to the state, for the space of sixty days from and after public notice is duly given of said confirmation by the commissioner, and not thereafter. *Act Jan. 15, 1857.*

SEC. 4217. When any person has heretofore, or may hereafter, enter any land or locate a homestead thereon, under the laws of the United States, and such land may have been, or shall thereafter be, confirmed to the state as swamp and overflowed land, such person shall have the preference right to purchase such land from the state at the minimum price fixed by law for such land, upon exhibiting to the commissioner the patent, receiver's receipt or certificate of application for a homestead issued by the United States for such land.

SEC. 4218. Such privilege shall continue for sixty days after such lands shall have been confirmed and offered at public sale by the state.

SEC. 4219. At any time before the confirmation of any swamp and overflowed land to the state, any person may exhibit to the commissioner the evidence hereinbefore provided for, or other satisfactory evidence, showing that he has entered, or located a homestead on, said land under the laws of the United States, and it shall be the duty of said commissioner to mark on his

(aa) See *Miller v. Gibbons*, 34—212.

books and plats the land embraced in such entry or location, and give to such person a certificate declaring his preference right to purchase said land from the state upon its confirmation as swamp and overflowed land. *Act April 28, 1873.*

SEC. 4220. It shall be the duty of the commissioner, immediately after any confirmation of swamp and overflowed lands, to examine the record in the United States land office; and all such confirmed swamp and overflowed lands as may have been entered in the United States land office shall be reserved from sale for the period of sixty days, and he shall forthwith publish a complete list of the numbers of such lands for two weeks successively in some newspaper authorized to publish the same (†), notifying the parties interested that, unless such lands are properly entered within the time above mentioned, the same will be sold, as now provided by law. *Act Jan. 21, 1861, sec. 2.*

SEC. 4221. Any person, or his legal representative, who has heretofore taken, or filed, under existing laws, a pre-emption to or upon any of the swamp or overflowed lands of this state, or who shall have settled upon, improved or cultivated said swamp lands, shall have the right, upon application to the commissioner, to perfect his right by entry and payment, thereby acquiring such right only as the state may have in the same undisposed of at the date of such entry.

SEC. 4222. In case such entry shall by mistake be made of lands which are not comprehended in the act of congress granting the swamp and overflowed lands to the State of Arkansas, then, in that case, the party availing himself of this act shall have no claim or demand upon the state for recoupment or otherwise.

SEC. 4223. In all cases where the original papers and evidences of existing pre-emptions have been lost or destroyed, oral proof may be made to the satisfaction of the commissioner, to enable the party aforesaid to perfect his title by entry as is hereinbefore provided. *Act Dec. 15, 1875.*

SWAMP LAND SCRIP REVIVED—WHEN BARRED.

SEC. 4224. All swamp land scrip issued up to this date, which is out of date by existing law, is hereby revived and shall be received in payment for any swamp lands subject to sale.

SEC. 4225. All swamp land scrip issued after the nineteenth day of January, 1861, shall have written on the back of such scrip that said scrip will be out of date in twelve months from its date. *Act Jan. 19, 1861.*

SALE OF SWAMP LANDS BEFORE CONFIRMATION.

SEC. 4226. All lands which have been, and which may hereafter be, selected by any authorized agent of the state to make selections of swamp and overflowed lands, shall be subject to sale on the following conditions, whether the same have ever been approved and patented to the state by the general government or not (b).

(†) See SECS. 4356-4358.

(b) See *Hendry v. Willis*, 33-833.

SEC. 4227. Pre-emptors and settlers on the selected and unconfirmed swamp lands of the state, and their legal representatives or assigns, shall have a preference right to purchase such lands by making satisfactory proof to the commissioner of state lands of their rights as such pre-emptors and settlers.

SEC. 4228. Any person not a pre-emptor or settler, who shall apply to purchase any of such lands, shall make and file with the commissioner of state lands an affidavit, stating that the land applied for has no improvement on it and that no person is residing upon it or claims it by virtue of any pre-emption certificate issued by authority of law, to the best of his or her knowledge and belief, which affidavit shall be attested by the county or circuit clerk, or by some notary public of the state, or by the commissioner of state lands, and shall be filed in the state land office.

SEC. 4229. On proper application being filed with the commissioner of state lands for the purchase of any of the selected and unconfirmed swamp lands of the state, and full payment therefor being made to the treasurer, the commissioner shall execute to the purchaser thereof a quitclaim deed therefor conveying all the right, title and interest of the state in and to the land so sold.

SEC. 4230. Nothing in this act shall be so construed as to repeal any part of an act entitled "An act to enable settlers and pre-emptors on the swamp and overflowed lands to perfect their titles by entry," approved December 15, 1875. *Act March 18, 1879.*

CONFLICTING TITLES.

SEC. 4231. In all cases where lands in this state have been selected by the state or its duly authorized agent as swamp land, and the same have also been selected by any railroad company or its authorized agent, as inuring to such company by virtue of any grant thereto, or to this state for the benefit thereof, and the same, because of such conflict, have not been approved or patented to either the state or to such company, the commissioner of state lands is hereby authorized and empowered to compromise such conflict with such company or its agent, and to agree therewith which of such lands should go to the state and which to such company; and to join in a request to the proper department at Washington City that patents issue respectively according to such compromise and agreement.

SEC. 4232. Should any legal points arise upon which the commissioner of state lands and such company, or its agent, can not agree, then such commissioner is authorized with such company, or its agent, to make an agreed case as to the facts, and to submit the same to the Pulaski Chancery Court, or any other court of competent jurisdiction, and it shall be the duty of such court to decide the legal questions arising thereon; *provided*, that in all cases where any of such lands have been sold by the state or railroad company prior to the passage of this act, the title of the purchaser shall not be disturbed or interfered with in any event, but the same shall be and is hereby confirmed and quieted in such purchaser.

SEC. 4233. No compromise made under the provisions of this act shall be binding on the state until the same has been approved by the governor. *Act March 13, 1879.*

SETTLEMENT WITH THE UNITED STATES AS TO SWAMP LANDS.

SEC. 4234. The commissioner of state lands, by and with the approval of the governor, is hereby authorized to appoint an agent, whose duty it shall be to procure the necessary proof in every case where lands granted to this state by the act of congress, approved September 28, 1850, entitled "An act to enable the State of Arkansas, and other states, to reclaim the swamp lands within their limits," were afterward disposed of by the United States, and to make a final settlement with the United States government on behalf of the state.

SEC. 4235. Each witness shall be allowed two dollars per day, and five cents per mile for each mile traveled in going to and from the point where he is summoned to appear, to be paid by said agent; *provided*, that each witness shall receive but two dollars per day for each day engaged in testifying, and mileage for the actual number of miles traveled, without regard to the number of cases in which he may testify; and, *provided*, that on final settlement with the treasurer, as hereinafter provided, said agent may retain any amounts that he may have expended in paying witness fees and mileage, for which he shall file with the treasurer vouchers signed by the witnesses.

SEC. 4236. The compensation of the said agent shall not exceed ten per cent. in kind of the amount recovered by him from the general government, the same to be paid by the state treasurer when settlement is made with the United States government.

SEC. 4237. Said agent is hereby authorized to administer oaths, and to send for persons and papers, and to compel attendance of witnesses. He shall have a seal, and attest each paper acknowledged before him.

SEC. 4238. At the time of settlement said agent shall make a detailed report to the commissioner of state lands, under his hand and official seal, showing the numbers and the amount recovered on each tract of land; and, on the certificate of the land commissioner, shall pay over the amount recovered, less commissioner and witness fees, and mileage, into the treasury of the state, taking duplicate receipts therefor, one of which he may retain himself, and the other he shall file with the auditor of state; *provided*, that the settlement for all funds collected under the provisions of this act shall be paid over to the state treasurer within thirty days after their being received from the general government, whether so received by said agent in full or partial settlement.

SEC. 4239. Said agent shall give bond to the State of Arkansas, with good and sufficient security, in the sum of \$100,000, to be approved by the commissioner of state lands and the governor, for the faithful performance of the duties set forth in the preceding sections of this act.

SEC. 4240. All titles to lands embraced in this act are hereby ratified and confirmed, and made as valid as if deeded or patented by the State of Arkansas. *Act Dec. 14, 1875.*

SEC. 4241. Upon the payment to the state by the United States government of the amount paid it for selected swamp lands entered after the passage of said act of congress, it shall be the duty of the commissioner of state lands to make a deed to such lands to the parties who purchased them from the United States, or to the grantees of such persons. *Act March 8, 1883.*

CONFIRMATION OF SALES.

SEC. 4242. All sales of swamp lands heretofore made by the proper land agents of the state, in which the full price was paid in swamp land scrip or United States or national currency, are hereby confirmed, whether such lands had at the date of such sales been confirmed as swamp and overflowed lands and offered at public sale or not; *provided*, that this act shall not affect or impair any rights or equities existing at the date of such sales. *Act Nov. 11, 1875.*

III.—LANDS FORFEITED FOR TAXES.

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- 4260. Terms "forfeited" and "forfeiture" apply to what.
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- 4272. Assignee of persons mentioned in section 4268 may redeem, when.
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SALE OF FORFEITED LANDS.

SECTION 4243. Hereafter all lands forfeited to the state for the non-payment of taxes, after being duly certified to the commissioner of state lands as now required by law, shall be subject to private sale at fifty cents per acre, sixty per cent. of which may be paid with the scrip of the county in which the land is situated, and the remaining forty per cent. with state scrip or currency; and the commissioner of state lands, immediately after the filing in his office of a receipt showing that the full amount of the purchase money for any of such lands has been paid into the state treasury, shall execute to the purchaser, his heirs and assigns, a quitclaim deed on behalf of the state to such land. *Act Dec. 13, 1875, sec. 1, as amended by act March 10, 1879.*

SEC. 4244. The counties in which the lands so sold are situated shall be entitled to sixty per cent. of all moneys arising from the sale of forfeited lands within their respective borders; *provided*, that nothing in this section or in section 4243 shall be so construed as to prevent the donation of the lands therein referred to as is now or may hereafter be provided for by law. *Ib.*

SEC. 4245. All town and city lots forfeited to the state for the non-payment of taxes, after being duly certified to the commissioner of state lands, as now required by law, shall be subject to private sale by the commissioner of state lands for the taxes, penalty and cost charged against such lots, as appears in the certificate of the county clerk to such commissioner, and on presentation to him of a receipt showing that the full amount of taxes, penalty and cost charged against such lots has been paid into the state treasury, in kind, the commissioner shall execute to the purchaser a quitclaim deed, as provided in section 4243 for making deeds to other forfeited lands. *Ib.*, sec. 2, as amended by act March 10, 1879.

SEC. 4246. All deeds issued by said commissioner as authorized by sections 4243 and 4245 shall be under his hand and official seal, and shall convey to the purchaser, his heirs and assigns, all the right, title and interest of the state to said lands and town lots, and such deeds shall be received as evidence in any court in the state. *Ib.*, sec. 4.

SEC. 4247. All lands and town and city lots which now appear on the records of the office of commissioner of state lands as being forfeited to the state for the non-payment of taxes, or which may be hereafter forfeited, and which remain undisposed of, shall be hereafter sold in the same manner as provided for in sections 4243 and 4245 for the sale of other lands and lots, and the commissioner of state lands shall in like manner issue deeds therefor; *provided*, that the counties, towns and cities in which such lots are situated shall be entitled to the county and city taxes so paid into the state treasury, and the counties in which such lands are situated shall be entitled to sixty per cent. of all moneys arising from the sale thereof. *Ib.*, sec. 5, as amended by act March 10, 1879.

SEC. 4248. The commissioner of state lands shall register in a book to be by him kept a true and correct list of all lands forfeited or sold to the state for taxes, and note in said book in whose name the same was listed, for what year or years it was taxed, the amount of tax due thereon, and when forfeited, which said book shall be open to the inspection of every one. *Rev. Stat.*, chap. 128, sec. 124, as amended by act Feb. 24, 1875, sec. 2.

DONATION OF FORFEITED LANDS.

SEC. 4249. The right of the state to all lands, other than town and city lots, which have been forfeited to the state for non-payment of tax, penalty and cost due thereon, may be donated to any adult citizen of the United States, in tracts not to exceed one hundred and sixty acres to each applicant therefor. *Provided*, each subdivision of such tract shall lie contiguous; and, *provided, further*, that such donation shall be granted subject to the conditions hereinafter mentioned. *Act March 14, 1879, sec. 1.*

SEC. 4250. If any one shall obtain such donation to a tract of improved land, he shall pay to the person owning such improvement double the value thereof, to be recovered before any court having jurisdiction of the matter (c). *Act Dec. 23, 1840, sec. 3.*

SEC. 4251. Hereafter no person shall have the right of donation to any of the lands of this state forfeited for the non-payment of taxes due thereon,

(c) Was this section repealed by the act of January 11, 1851? See *Simpson v. Robinson*, 37—132.

except such persons as may actually settle and reside upon the lands so donated, and make the proof of improvement within eighteen months from the date of the certificate of donation.

SEC. 4252. Any person wishing to obtain such donation shall apply therefor to the commissioner of state lands, and at the same time shall file in the office of said commissioner his or her affidavit, stating that he or she is over the age of twenty-one years, and that the land applied for is for the purpose of actual settlement, occupancy and cultivation by the applicant, and not with a view to speculation. *Act March 21, 1881, secs. 1 and 2.*

SEC. 4253. Upon filing with the commissioner of state lands a written application, and the affidavit provided for in section 4252, such commissioner shall issue a certificate, under his hand and seal, setting forth that such applicant had applied for a donation of the right of the state to the land described in the application, which certificate shall further state that, if within eighteen months from the date of the application the applicant shall present proof to the commissioner that he or she resides upon, and has cleared, fenced and put in readiness for cultivation five acres, the donee shall be entitled to a deed from the state, conveying all the right, title and interest of the state in and to the land mentioned in the certificate. *Ib., sec. 3.*

SEC. 4254. Each individual receiving such donation shall, upon completing the improvements required to be made upon said land, obtain from some justice of the peace residing in the township where said land is situated (d) a certificate setting forth the quarter section, township, range and county where said land is situated, that he has been, within ten days next preceding the date of his certificate, on the identical tract described, and that the improvement on said land is a *bona fide*, substantial improvement, and shall state the number of acres cleared, fenced and ready for cultivation upon said land, which certificate shall be attested by the justice taking the same, and filed in said commissioner's office; and such certificate, or an authenticated copy thereof, shall be evidence that the donee has complied with that part of the law requiring the land to be improved. *Act Dec. 23, 1840, sec. 5.*

SEC. 4255. In case of failure on the part of any donee to make proof of improvement, in the manner now provided for by law, and within eighteen months from the date of the certificate of donation provided for in section 4253, the land applied for, together with all improvements thereon, shall revert to the state, and the donee shall forfeit all right, title and claim to the land, and the same shall thereafter be subject to sale or donation as other forfeited lands. *Act March 14, 1879, sec. 4.*

SEC. 4256. On presentation to him of the proof of improvement provided for in section 4254, the commissioner of state lands shall execute to the donee, or to his heirs or assigns, a deed, under his hand and official seal, conveying all of the right, title and interest of the state in and to the lands so donated, which deed shall have the same force and effect as other deeds which such commissioner is authorized by law to execute, on behalf of the state, to forfeited lands. *Ib., sec. 5.*

SEC. 4257. The deed of the commissioner shall be evidence in all courts of a good and valid title in the donee, his heirs and assigns, and shall be evi-

(d) See *McCauley v. Sir*, 40—244.

dence that the land had been regularly forfeited by the original owner, that the state had properly donated its right thereto, and such evidence shall be received by the courts (e). *Act Dec. 23, 1840, sec. 7.*

SEC. 4258. Where land so donated shall be abandoned, forfeited to the state by a non-performance of the conditions of the law, or by a voluntary abandonment, the same shall be redonated in the manner prescribed by law. *Act Dec. 23, 1846.*

SEC. 4259. Donees shall be allowed to surrender their donation certificates within the time prescribed for completing the improvements required by law to be made on the lands described in such certificate. *Provided*, that such donee shall at the time of such surrender purchase all of the land described in such certificate by paying the price per acre fixed by law for the sale of forfeited lands.

SEC. 4260. The words "forfeited" and "forfeiture," whenever used in this act, shall be construed to mean and apply to lands which were sold for non-payment of taxes according to law, and remain unredeemed at the expiration of two years from the date fixed by law for the county collector's sale of lands returned delinquent for non-payment of the taxes due thereon. *Act March 14, 1879, secs. 6, 7.*

SEC. 4261. The affidavits above required may be made before the commissioner of state lands, or before the clerk of the circuit court or some notary public of the county and state in which the applicant resides, and when made before such clerk or notary public, he shall certify the same under his hand and seal of office, and the applicant shall file the same in the office of commissioner of state lands. *Act Dec. 12, 1850, sec. 7, as amended by act March 14, 1879.*

SEC. 4262. No one shall be entitled to the right of a donation to any of the lands of this state who has ever taken the benefit of the donation laws of this state, except to such quantity as would make the whole quantity so donated amount to not over one hundred and sixty acres. *Provided*, that any person entitled to a donation, as provided by section 4251, although he may have before had the right of donation, who, at the time of the passage of this act, is not the owner of any land, may be permitted to obtain by donation one hundred and sixty acres on the same conditions and restrictions as other donees.

SEC. 4263. No donee shall cut or remove any timber from the land taken by him under this or existing laws, except for the improvement of said land, until the necessary proof of improvement shall be filed with the state land commissioner, and any violation of this section shall be a misdemeanor, and, on conviction, shall be fined in any sum not less than ten dollars.

SEC. 4264. Any person owning and residing upon any lands shall have the right of donation to not more than one hundred and sixty acres, lying contiguous and adjacent to his said farm; in which case it shall not be necessary for the donee to make proof of residence upon the land so donated, but only of the other improvements required by law.

SEC. 4265. It shall be the duty of the state land commissioner to make the applications for and his certificates of donation conform to the requirements and provisions of this act. *Act March 21, 1881, secs. 4-7.*

(e) An action to recover land held under a donation deed must be brought within two years. SEC. 4475. And before such action can be brought all taxes and costs and interest, and the value of all improvements made after the expiration of the period allowed for redemption, must be first tendered. SECS. 2649-2651.

SEC. 4266. Taxes on lands donated shall be assessed and collected as taxes on other lands, and the advertisement and sale shall be in the same manner as provided by law for other taxable lands. *Ib.*, and *act Jan. 15, 1857.*

SEC. 4267. In all cases where lands are donated by the state and the taxes shall remain unpaid, and the lands be sold by reason of such non-payment, the donee shall have the same right and time for redemption as exists by law in regard to other lands sold for taxes. *Act Jan. 15, 1857.*

REDEMPTION OF FORFEITED LANDS IN CERTAIN CASES.

SEC. 4268. All lands and town or city lots, or parts thereof, which have been or may hereafter be forfeited to the state for non-payment of taxes, which belong to minors, *femmes covert*, persons of unsound mind and persons in confinement at the date of forfeiture, may be redeemed by such persons by application to the commissioner of state lands within the limitation now prescribed by law, and upon the terms and in the manner now provided by law, or that may hereafter be prescribed by law (†).

SEC. 4269. Persons of the class above mentioned may, by themselves or by their guardian or next friend, present their petition to the commissioner of state lands, setting forth the evidence of their title at the date of forfeiture and their right to redeem under this act, and the facts set forth shall be sworn to by the petitioner or petitioners, and such oath shall be attested by the clerk of the circuit court of the county, or some notary public of the county and state in which such petitioner resides, or before the commissioner of state lands. *Act March 6, 1877, secs. 1, 2, as amended by act March 14, 1879.*

SEC. 4270. The commissioner may require other evidence than the petition to establish the facts therein set forth, and the petitioner may take proof by affidavit or otherwise, as the commissioner may prescribe.

SEC. 4271. If the commissioner find the facts set forth in the petition to be true, he shall cancel the forfeiture on his books and issue his certificate to the party redeeming the same, setting forth the fact that the same has been duly and legally redeemed by the payment of all taxes, penalties and costs due thereon, and upon the presentation of said certificate to the clerk of the county in which said lands lie he shall mark on his record of lands forfeited to the state opposite to the tract described in said certificate the words "redeemed before the commissioner of state lands," and the time when so redeemed.

SEC. 4272. The assignees of the persons mentioned in section 4268 shall have two years after they shall have acquired title to redeem the lands, town or city lots, and under the same provisions and restrictions that their assignors had, and in no case shall they have a longer time in which to redeem than the assignor had at the time of sale. *Ib.*, *secs. 3-5.*

SEC. 4273. The provisions of this act shall not apply to any town or city lots that have been in any wise disposed of by the state prior to the filing in the office of the commissioner of state lands such petition for redemption. *Ib.*, *sec. 6, as amended by act March 14, 1879.*

(†) The provision of the revenue act of 1883, which corresponds to section 5197 of Gantt's Digest, does not embrace *femmes covert* among the persons entitled to redeem at any time within two years after the expiration of their disabilities. See SEC. 5772. As to the ownership which will entitle a person to redeem land from tax sale, see *Woodward v. Campbell*, 39—580; *Sanders v. Ellis*, 42—215.

IV.—SEMINARY, SALINE AND INTERNAL IMPROVEMENT LANDS (*).

SECTION	SEMINARY LANDS.	SECTION	4276. Legal sub-divisions, to be sold in, except.
4274. How sold and price of.		INTERNAL IMPROVEMENT LANDS.	
	SALINE LANDS.	4277. How sold and price of.	
4275. How sold and price of.		4278. Fractional sub-divisions, how sold.	

SEMINARY LANDS.

SECTION 4274. The commissioner of state lands shall sell the seminary lands at not less than one dollar per acre. They shall be sold in legal sub-divisions of not less than one-half quarter section, at private entry. *Act Dec. 23, 1846, sec. 2, and act March 19, 1881.*

SALINE LANDS.

SEC. 4275. He shall sell the saline lands at private sale, for not less than one dollar and twenty-five cents per acre.

SEC. 4276. Said lands may be sold in legal sub-divisions of forty acres each, except the one upon which is located a salt spring, and which shall not be sold in a tract less than one hundred and sixty acres contiguous to the salt spring. *Act Jan. 12, 1853.*

INTERNAL IMPROVEMENT LANDS.

SEC. 4277. The commissioner of state lands shall sell any of the internal improvement lands, now unsold, to any citizen of the United States at one dollar and twenty-five cents per acre, in quantities not less than forty acres and not exceeding six hundred and forty acres, in contiguous tracts and according to the legal sub-divisions of the public surveys, but no land shall be subject to entry at the price of one dollar and twenty-five cents per acre which shall not previously have been offered at public sale to the highest bidder. *Act Dec. 20, 1844, sec. 5, and act Jan. 12, 1853, sec. 6.*

SEC. 4278. Any legal sub-division of less than eighty acres, so marked and designated upon the plats, may be sold for the quantity called for by the United States surveys at one dollar and twenty-five cents per acre. *Act Jan. 10, 1851.*

(*) The sections of previous digests which related to sales on a credit are omitted. See SEC. 4324.

V.—REAL ESTATE BANK LANDS.

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4280. To make report to governor.

APPRAISERS AND THEIR DUTIES.

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4283. to appraise and make schedule.

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4286. Commissioner to give notice of sale.

4287. Sold by commissioner, when and how.

4288. Price.

4289. Purchases, application for, etc.

4290. Payment to treasurer, who gives receipt.

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4291. Receipt of treasurer to be countersigned by commissioner.

4292. What bonds receivable for lands.

SALES TO OWNERS OF EQUITY OF REDEMPTION.

4293. Lands withheld from sale ninety days, except to owners of equity of redemption.

4294. Application of such owner to purchase, when to be filed.

4295. Certificate of purchase, when to issue.

4296. Notice of rejected application.

4297, 4298, 4299, 4300, 4301. Proceedings in case of contest on rejection of claim.

4302. Terms of purchase by owner of equity of redemption.

4303. Sections 4293 to 4302 to inure to benefit of legal representatives of such owners.

COMMISSIONER TO ATTEND SALE OF, AND MAKE REPORT.

SECTION 4279. It shall be the duty of the commissioner of state lands to attend all sales of lands mortgaged to the Real Estate Bank of Arkansas, made by the master in chancery, or other person appointed by the Pulaski Chancery Court to sell such lands under the decree of such court upon the foreclosure of the mortgages thereon, and to purchase any or all of such lands at such sales for the state. *Provided*, that said commissioner shall not purchase any of such lands for the state at a greater price than the amount due and chargeable upon them under the decree of said court. *Act July 15, 1868, sec. 10.*

SEC. 4280. Said commissioner shall, as soon as possible after any such lands are purchased by him for the state, make a report to the governor of his action in the premises, showing what lands were so purchased by him for the state at such sale, the county in which they may be situated, the numbers and description of such tracts, and the price at which each tract was struck off to the state; also, what improvements, if any, there are upon such lands, and the value of such improvements as near as he can estimate them. *Ib., sec. 11.*

APPRAISERS AND THEIR DUTIES.

SEC. 4281. The governor shall, as soon as possible after receiving the report of said commissioner, appoint from the legal voters of the county in which any of such lands are situated three competent persons to appraise the lands so purchased by the state in their respective counties.

SEC. 4282. Each of said appraisers, before entering upon his duties, shall take, in addition to the oath of office prescribed by the constitution and laws of the state, an oath that he is not interested, directly or indirectly, in any of the lands to be appraised by him, as a settler thereon, and that, to the best of his ability, he will appraise all such lands situated in his county, as shown by a list thereof, to be furnished him by the commissioner, at the actual cash value thereof at the time of such appraisement. *Ib., sec. 12.*

SEC. 4283. It shall be the duty of such appraisers to appraise all such lands immediately, or as soon as possible after their qualification; and, as soon as they have appraised such land, to make a schedule in duplicate showing such lands by numbers and description as sold, and the appraised value of each tract of land of forty acres or less, and forward one copy of the schedule to the governor and one to the commissioner.

SEC. 4284. Such schedule shall have attached thereto the affidavits of the appraisers, that the description of the lands therein contained, and the valuation thereof as fixed by them, is correct and fair, to the best of their knowledge, judgment and belief. *Ib.*, sec. 12, as amended by act Dec. 15, 1875.

SEC. 4285. The appraisers shall be allowed two dollars and fifty cents per day each for each day heretofore employed, or to be employed, in the appraisal of said lands, their accounts to be made out separately, and sworn to by them before the clerk of the county in which the lands are situated. *Act March 9, 1877.*

NOTICE AND TERMS OF SALE.

SEC. 4286. Upon the receipt of the schedule from the appraisers appointed to appraise the Real Estate Bank lands, the commissioner shall give public notice that said lands will be offered at public sale at a time therein specified, being not less than ninety days from the date of said notice, said notice to be published at least four weeks in one paper in Little Rock. *Provided*, said lands shall not be sold at such public sale for less than the appraised valuation, including the improvements thereon. *Act March 5, 1875, sec. 3, and act Dec. 15, 1875, sec. 2.*

SEC. 4287. If such lands do not bring their appraised value, it shall be the duty of the commissioner to make sale of the same, by and at private sale, to any person applying to him to make such purchase upon the terms hereinafter provided. *Act July 15, 1868, sec. 13.*

SEC. 4288. Such lands shall not be sold by the commissioner at a less price than the valuation thereof as provided for in this act; but may be sold at private sale, at the appraised value thereof, as shown by the schedule of the appraisers of the county in which such lands are situated. *Ib.*, sec. 14.

SEC. 4289. It shall be the duty of the commissioner, immediately upon the application to him by any person to purchase any of such lands, to give such person a certificate of such application, giving the number of acres applied for and the description thereof as appraised, with the appraised value of such tract, and showing the total amount of the purchase money of the tract or tracts applied for. *Ib.*, sec. 16.

SEC. 4290. Such person shall present said certificate to the treasurer within ten days after the date thereof, and it shall be the duty of such treasurer thereupon to receive from such person the amount of the purchase money, as shown by such certificate and receipt to such person therefor, specifying in such receipt that the money so received by him is for the purchase of the lands specified in the certificate of the commissioner to such person, describing them particularly. *Ib.*

SEC. 4291. Such receipt shall be countersigned by the commissioner, and when so countersigned such person or his assigns shall be entitled to receive from the state a deed for such lands, to be executed by the commissioner, and it shall be the duty of the commissioner to execute to such person a deed for the lands specified in such receipt upon the same being presented to him therefor by such person or his assigns. *Ib.*

SEC. 4292. The six per cent. funded bonds of the state shall be received by the treasurer in payment of debts due the Real Estate Bank, and in payment of the purchase money of lands whereof the state has title by reason of the foreclosure of mortgages executed to said bank, whether the said bonds be due or not; *provided*, that bonds issued in lieu of the bonds known as Holford bonds shall not be so received. *Act Feb. 26, 1879.*

SALES TO OWNERS OF EQUITY OF REDEMPTION.

SEC. 4293. After notice has been given by the commissioner as provided for in section 4286, the lands referred to in said notice shall be withheld from sale for ninety days, except to such persons as may have been the owners of the equity of redemption at the time of the purchase by the state.

SEC. 4294. At any time within ninety days from the date of said notice, any person may file in the office of the commissioner of state lands his application to purchase any one or more of said tracts of land, accompanied by his affidavit that he was the owner of the equity of redemption of such lands at the time of the purchase by the state, and, together with such application and affidavit, shall also file whatever evidence of title to such lands he may possess.

SEC. 4295. It shall be the duty of said commissioner to preserve said application and accompanying papers, and at the expiration of ninety days from the date of said notice he shall proceed to examine said evidences of title; and if it shall appear to his satisfaction that said applicant was the owner of such equity of redemption (†), he shall issue a certificate of purchase as now provided by law.

SEC. 4296. If there should be more than one applicant to purchase said lands, it shall be the duty of the commissioner immediately to notify the applicant whose application has been rejected.

SEC. 4297. If said applicant whose claims have been rejected shall, within thirty days after said decision, notify the commissioner of his purpose to contest the same, it shall be the duty of said commissioner to send down to the clerk of the circuit court of the county in which the said lands are situate all the papers aforesaid in his office relating thereto.

SEC. 4298. The party contesting said decision shall, immediately after the same is done, sue out a summons from said court, directed to said successful applicant, stating his contest, and requiring said successful party to show cause why his said certificate of purchase should not be canceled and set aside.

SEC. 4299. If said summons shall have been served ten days next preceding the first day of the term of said court following said filing before the clerk,

(†) See *Davies v. Hunt*, 37—574.

then the said court shall proceed to hear said cause in a summary way, unless either party shall require a jury, and said cause shall be tried as cases in ejectment are now heard and tried.

SEC. 4300. If said finding shall be for said contesting party, he shall procure a certified transcript of the same, and when it shall be filed in the office of the commissioner of state lands, he shall issue his certificate of purchase to said successful party and cancel the one theretofore issued. *Provided*, that either party may appeal to the supreme court with *supersedeas* and stay of judgment as provided by law.

SEC. 4301. No deed to such lands shall be made until the litigation touching the same, as contemplated herein, is fully determined and the commissioner officially notified thereof.

SEC. 4302. The owner of the equity of redemption may purchase for cash, as now provided by law (*).

SEC. 4303. The benefit of this act shall inure to the benefit of the legal representatives of such owners of the equity of redemption. *Act Dec. 15, 1875.*

(*) This section, as found in the acts of 1875, is as follows: "The owner of the equity of redemption may purchase on time or for cash, under the restrictions now provided by law." The words omitted in this digest appear to be inoperative because of the previous repeal of all statutes authorizing the sale of Real Estate Bank lands, or other state lands, on a credit. See SECS. 4324, 4325.

VI.—GENERAL PROVISIONS.

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THE GOVERNOR TO SELECT, OR CAUSE TO BE SELECTED, CERTAIN LANDS.

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GOVERNOR TO SELECT, OR CAUSE TO BE SELECTED, CERTAIN LANDS.

SECTION 4304. The governor is hereby authorized to select, or have selected, any and all lands which shall be due the state in any way, either in lieu of swamp and overflowed lands sold by the United States, or under any other grants; and shall take the necessary steps to have the same acted upon by the proper United States authorities, and confirmed to the state as a part of the aforesaid grants. *Act Jan. 31, 1859, sec. 2.*

HOW PATENTS PROCURED.

SEC. 4305. The owner of any original or patent certificate for any semi-nary, saline, internal improvement, swamp and overflowed, Real Estate Bank or State Bank lands, or the assignee, or the party or parties in whom the legal title to the land exists, may present such certificate (h) to the commissioner of state lands, who, if he find that the sale of such land was made in conformity to law and has been fully paid for, shall execute under his hand and official seal a deed or deeds conveying all right, title and interest of the state thereto, and the seal of the commissioner shall be sufficient verification and authentication of the deed or deeds so made, and shall entitle the same to record, and the same is hereby made and shall be received as evidence in any court of this state (†). *Act Dec. 13, 1875, sec. 1, as amended by act March 9, 1881.*

(h) See *Harrison & Stewart v. Lewis*, 27—152.(†) Patents for swamp lands are conclusive evidence of the legal title, and must prevail, unless the opposing claimant shows a prior right or superior equity. *Holland v. Moon*, 39—121. See *Heder & Pettus v. Gist*, 27—200; note (*) to SEC. 4191.

SEC. 4306. The certificates upon which deeds are so made shall be filed in the commissioner's office, and the commissioner shall keep an abstract of the deeds so made, from which he may issue duplicates upon sufficient proof of the loss of original deeds; and in all cases where sufficient proof is presented of the loss or destruction of any deeds heretofore made to any lands belonging to this state, by any officer authorized so to do, where evidence exists in the commissioner's office of the issuance of such former deeds, it shall be the duty of the commissioner to issue duplicates or make new deeds therefor, as the case may be, referring therein to the deeds heretofore issued; and the said duplicates or new deeds shall have the like force and effect as the original deeds. *Act Dec. 13, 1875, sec. 2.*

SEC. 4307. All original certificates for the purchase of lands filed by the auditor of state in the office of the state treasurer, as required by section four of "an act to enable the governor to make deeds to swamp and overflowed lands," after such lands shall have been patented by the United States to the State of Arkansas, approved 20th of January, 1855, and all other evidences of title to state lands now in the custody of the treasurer of state, be, and the same are, hereby required to be filed in the office of the commissioner of state lands, and the same shall be preserved by said commissioner as the other public records and files of his office.

SEC. 4308. The treasurer of state shall, before turning such papers over to the commissioner of state lands, make a schedule of the same, and shall take from the said commissioner his receipt for the same. *Act Feb. 12, 1883.*

LOST CERTIFICATES—HOW REPLACED.

SEC. 4309. The commissioner, when demanded, shall issue certificates of purchase for land sold by land agents or by said commissioner in cases in which it shall appear by the records that no certificates had ever been issued, and in cases where the affidavit of the applicant, or some person for him, shall be filed, stating that the original certificate had not been assigned, and that the same has been lost or destroyed. *Act Dec. 5, 1854.*

ERRORS IN THE SALE OF STATE LANDS—HOW AND BY WHOM CORRECTED.

SEC. 4310. The commissioner shall have power to correct all manifest errors in the description of lands sold and in the amounts of notes given for lands sold by the state, and also in cases where notes may have been given for the purchase of a greater number of acres in any purchase than has been confirmed to the state. *Ib., secs. 2, 3.*

SEC. 4311. When there are conflicting claims to swamp and overflowed lands, the commissioner may administer oaths, and shall, upon proper notice to the parties, and upon hearing testimony and statements under oath, decide to whom the patent certificate shall be issued, in accordance with the law on the subject, and shall issue the patent certificate accordingly; and should the other party whose claim is not allowed to such land desire a certificate to the auditor, upon which to have the amount paid by him upon the land refunded, the commissioner shall issue the necessary certificate to enable him to do so

upon his surrendering his original certificate to the commissioner. *Act Jan. 20, 1855.*

SEC. 4312. He shall have power to correct any errors that now or may hereafter exist growing out of the erroneous sale of lands belonging or formerly belonging to the state.

SEC. 4313. In all cases where lands have been erroneously confirmed to the state and sold by her; twice sold by commissioners or agents; twice paid for; sold by them when the same were unconfirmed, misdescribed, in whole or in part; when the sales thereof are in any way irregular, informal or incomplete; the commissioner shall issue the necessary certificates, or take the necessary steps, to perfect the entry or to enable the purchasers, their heirs or assigns, to have refunded to them any scrip or money which they may have paid on any entry that is void or voidable.

SEC. 4314. In all such cases where by any reason the state shall be unable to make title to any purchaser of state lands, it shall be lawful for said commissioner to issue a refunding certificate for the amount received from such purchaser which shall have been paid into the state treasury, and the auditor shall draw his warrant upon the treasurer therefor.

SEC. 4315. It shall be the duty of the commissioner to complete, as soon as practicable, the record of errors existing in the sales of swamp and overflowed lands, and to add thereto notes of such errors as may hereafter come to his knowledge, and certified extracts from such records shall be received as evidence in any of the courts of this state.

SEC. 4316. Such action on the part of the commissioner shall be legal and binding until overruled or set aside by the decision of a court having competent jurisdiction.

SEC. 4317. The commissioner, on production of proof satisfactory to him, may correct errors and put lands in a situation to have deeds thereon made, and in all such cases the action of the commissioner shall be final, unless set aside by judgment or decree of a court having competent jurisdiction thereof; and the commissioner may furnish a person with a statement of any amounts that may be due in order to perfect any entry or purchase, to be paid directly into the treasury; and for such service such fees shall be allowed as were by law allowed to agents. *Act Feb. 17, 1859.*

SEC. 4318. In all cases wherein any person may have heretofore given his note or bond to the state for the purchase of any of the lands of said state, under existing laws, when from any cause whatever the state can not make a good title to such purchaser, his assignee or legal representatives, or where the quantity of land is less than the number of acres purchased, upon application to the commissioner, he shall investigate the case, and if it appear that such lands have been sold to such person by mistake, and that the state can not make title thereto, the purchaser shall surrender his certificate of purchase to the commissioner, and the commissioner shall certify the facts to the state treasurer, upon which certificate the treasurer shall deliver to such person his bond or note, so given, for the purchase money of such land, and refund to him, or his agent, out of the appropriate fund, so much of the purchase money for such land as may have been paid into the treasury, and note the facts upon the proper records of his office. *Act Feb. 21, 1859, sec. 1.*

SEC. 4319. In all cases where such bond or note may have been placed in

the hands of the prosecuting attorney, the treasurer shall credit him for the amount of such bond or note, and issue his certificate of the facts to the prosecuting attorney, upon which he shall forthwith deliver up said bond or note to such person, or his agent, or legal representative, and refund to him so much of the purchase money for such land as may be in his hands, and in no case where the purchase money is refunded shall the prosecuting attorney be allowed to retain the per cent. allowed him by law for collecting it, it being the object of this act to have refunded to all such purchasers of land from the state the whole amount paid by them on their bond or note. *Ib.*, sec. 2.

SEC. 4320. In all cases where money has been paid into the state treasury by any person, upon notes given for the purchase of lands from the state, erroneously, as aforesaid, to which the state can not make a title to the purchaser, upon application of such persons, their assigns or legal representatives, to the commissioner, he shall, if he be satisfied that such money has been paid into the treasury, certify the same to the auditor, and he shall issue his warrant upon the treasurer for the amount so wrongfully paid (q). *Ib.*, sec. 3.

TITLE TO LANDS SOLD, NOT TO VEST IN PURCHASER UNTIL PAID FOR.

SEC. 4321. All lands heretofore sold by the governor, land agents and commissioner on a credit shall remain the property of the state until the full payment of the purchase money, and all interest which has accrued or shall accrue thereon, and no sale of any such lands, which has been, or shall hereafter be, made for taxes shall in any manner interfere with the right of the state to hold such lands bound for the full payment of the purchase money, and all interest thereon as aforesaid (r). *Act Jan. 10, 1851, sec. 12.*

SEC. 4322. No tax title shall be valid or binding against the equitable or legal interest of this state in or to any real estate whatever; but such tax titles are and shall be void, so far as the same shall conflict with the interest of the state, and shall be treated and considered as null and void in all courts. *Ib.*, sec. 12.

REPORT OF LANDS SOLD UNDER DECREES, ETC.

SEC. 4323. The clerk of the separate court of chancery for Pulaski County shall, as soon as practicable, make out from the records in his office a complete statement of the cases wherein the State of Arkansas is plaintiff and affecting the title to lands known as seminary, saline and internal improvement land, giving the title of the case, the number or description of the land, the class to which it belongs, amount of the decree, date of sale, to whom sold, and the amount received, and file the same with the commissioner of state lands; and the said clerk shall be required to make such a report to said commissioner immediately after each sale of such lands under decree. *Act March 5, 1875.*

PRICE OF LANDS—PREPAYMENT, ETC.

SEC. 4324. The swamp and overflowed lands belonging to this state shall hereafter be sold at not less than one dollar per acre. The saline and internal

(q) But there must be an appropriation to pay before the auditor can draw, or the treasurer pay, the warrant. See SECS. 3173, 3198.

(r) See SEC. 5587.

improvement lands shall be sold at not less than one dollar and twenty-five cents per acre; and seminary lands at not less than one dollar per acre; and the said lands shall not be sold on a credit, but prepayment, in any funds receivable by law (*), shall be made to the treasurer (†) before any certificates shall be issued therefor. *Act March 5, 1875, sec. 1, as amended by act March 19, 1881.*

SEC. 4325. In the sale of lands known as Real Estate Bank lands and State Bank lands, the same payment shall be required as provided in the foregoing section for other lands. *Act March 5, 1875, sec. 2.*

SEC. 4326. All laws under which the funding bonds issued under an act entitled "An act to provide for the funding of the public debt of the state," approved April 6, 1869, and numbered from four hundred and ninety-one to eighteen hundred and sixty inclusive, or the coupons thereof, are made receivable for lands in this state, or in satisfaction of mortgages, are hereby repealed. *Act March 10, 1879.*

VII.—COLLECTION OF CLAIMS DUE FOR STATE LANDS, SUITS RELATING THERETO, ETC.

SECTION

SUITS RELATING TO STATE LANDS, ETC.

- 4327. Transfer of suits, etc.
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- 4329. Duty of prosecuting attorneys.
- 4330. Fees of chancery clerk for transcripts.
- 4331. Suits for lands or purchase money, where to be brought.

PROSECUTING ATTORNEYS TO COLLECT CLAIMS.

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- 4334. Possession of lands to be secured, when.
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ACTION, AGAINST WHOM AND HOW BROUGHT, PROCESS, ETC.

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- 4338. Process may be upon occupant of the land.
- 4339. Warning order, when.
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SECTION

- 4341. If defendant dead, warning order against heirs, etc.
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- 4343. When suit stands for trial.
- 4344. Limitation, statute of, no defense.
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- 4346. Note, production of, proves debt.
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- 4348. Service by publication, who barred by.
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- 4352. Personal decree, may be against whom.

FEES OF PROSECUTING ATTORNEY FOR COLLECTING.

- 4353. Fees of prosecuting attorney.

REPORT OF PROSECUTING ATTORNEY.

- 4354. Collections to be paid over quarterly.
- 4355. Notes or bonds for lands not to be paid in certain bonds.

SUITS RELATING TO STATE LANDS, ETC.

SECTION 4327. It shall be the duty of the clerk of the Pulaski Chancery Court to make full and complete transcripts, on application of the defendant, of all record, entries and proceedings in all suits pending in said court which relate to sixteenth section lands, internal improvement lands, seminary lands, saline lands, and all other lands which may have been sold by the state, and

(*) See *Crofton v. State*, 34—271; *Woodward v. Campbell*, 39—580; *Smithee v. Campbell*, 41—472.

(†) See SECS. 3210, 3211.

which lie beyond the limits of Pulaski County, or to money due for said lands, which transcripts, duly certified as required by law, he shall transmit, with all the original papers on file in each suit, to the clerks of the circuit courts of the several counties in which the lands lie, within ninety days from the passage of this act.

SEC. 4328. Upon the receipt of such transcripts and original papers, the clerks of said circuit courts shall give a receipt for the same to the clerk of the Pulaski Chancery Court, and shall file the transcripts and original papers in their respective counties, and enter said suits upon the docket, and all further proceedings in said suits shall be had in the circuit courts of the counties in which said lands lie, as in case of suits originally brought in said circuit courts.

SEC. 4329. It shall be the duty of the respective prosecuting attorneys of the several judicial districts in which the lands lie to prosecute said suits on behalf of the state, and all persons summoned or bound to appear to the same in the Pulaski Chancery Court shall appear to the same in the circuit courts, respectively, to which said suits may be transferred.

SEC. 4330. For making said transcripts and transmitting the same to the several circuit court clerks, the clerk of the Pulaski Chancery Court shall be allowed the usual fees for transcripts, together with actual expenses of transmitting the same, which he may do by mail, or any mode he may deem most convenient and safe, which fees and expenses shall be audited and approved by the chancellor and paid out of the state treasury.

SEC. 4331. All suits hereafter brought which relate to sixteenth section lands, internal improvement lands, seminary lands, saline lands, and all other lands which may have been, or may hereafter be, sold by the state, and which lie beyond the limits of Pulaski County, or to money due for said lands, and all suits and proceedings to enforce or protect the rights and interests of the state in respect of said lands, or the purchase money agreed to be paid therefor, shall be brought, prosecuted and determined in the respective counties where said lands lie, and the several prosecuting attorneys of the respective judicial districts where the lands lie shall prosecute said suits on behalf of the state, as provided in section 4329. *Act Jan. 26, 1875.*

PROSECUTING ATTORNEYS TO COLLECT CLAIMS.

SEC. 4332. It shall be the duty of the treasurer of the state to deliver to the several prosecuting attorneys, and take their receipts therefor, all notes, bonds and other evidences of indebtedness to the state for what is known as internal improvement lands, seminary lands, saline lands and bank lands, and all other lands which may have been sold by the state. *Provided*, that no such notes, bonds or other evidences of indebtedness shall be delivered to a prosecuting attorney, or any other officer or attorney, until such attorney shall execute and file with the auditor a bond in a sufficient sum, with surety to be approved by the governor, conditioned for the faithful prosecution of said claims, and for the faithful payment to the treasurer of all moneys which shall come into his hands on such debts. *Act July 16, 1868, sec. 1.*

SEC. 4333. The prosecuting attorney shall institute suits upon such notes, bonds and other evidences of indebtedness, and shall proceed to enforce the

vendor's lien in such cases, and take such steps and proceedings therein as may be necessary for the collection thereof. *Ib.*, sec. 2.

SEC. 4334. If he shall, upon examination, find that any of said lands have been forfeited to the state, then it shall be his duty to take such steps as may be necessary to take or secure the immediate possession of said forfeited lands. *Ib.*

SEC. 4335. When a party has executed more than one such note, bond or other evidence of indebtedness, one action may be brought on all executed by him. *Ib.*, sec. 3.

ACTION AGAINST WHOM AND HOW BROUGHT, PROCESS, ETC.

SEC. 4336. The action shall be in favor of the State of Arkansas and against the maker or obligor of such note or bond. *Ib.*, sec. 4.

SEC. 4337. Service of process as now or hereinafter provided by law in any county in the state shall be sufficient. *Ib.*

SEC. 4338. The process may also be served upon the occupant of the land for which such note or bond was given. *Ib.*

SEC. 4339. If the return upon a process shows that the defendant is not found in the county in which such land is located, or upon an affidavit of some credible person that the defendant is a non-resident of the state, the clerk of the proper chancery or circuit court, upon the application of the prosecuting attorney, shall make and enter on the record an order which shall contain the title of the suit, the date and amount of the note or bond proceeded upon, and a description of the land upon which the lien is sought to be enforced, and warn the defendant to appear and make defense thereto on the first day of the next term of such court that commences more than sixty days from the date of such order. *Ib.*, sec. 5.

SEC. 4340. The publication of such order once in each week, for four successive weeks, in an authorized newspaper, as provided by law (†), shall be equivalent to a personal service. *Provided*, that such order shall designate the month and day of the month on which such term of said court will commence. *Ib.*

SEC. 4341. If the return of the officer upon the process mentioned in the preceding sections shows that the defendant is dead, or upon other proofs thereof before such clerk, said clerk shall make and enter the order mentioned in the preceding sections, except that it shall warn generally "the heirs and personal representatives" of the defendant to appear and make defense thereto as provided in the preceding sections. *Ib.*, sec. 6.

SEC. 4342. The publication of such order, as provided in the preceding sections, shall be equivalent to a personal service. *Provided*, that upon a return of the officer on the process, showing that the defendant is not found in the county in which such land is situated, the prosecuting attorney shall file before said clerk an affidavit to the effect that he has used due diligence, and has not been able to ascertain whether the defendant is dead or alive, the clerk shall make and enter on the record such order, except that the defendant, if living, or his heirs and legal representatives, if he is dead, are warned to appear, as provided in the preceding sections, and, when published as required by said sections, shall be equivalent to a personal service. *Ib.*

(†) See SECS. 4336-4338.

SEC. 4343. The suit shall stand for trial at the first term of said court that commences not less than thirty days after the process was served, or, if the service was by publication, not less than thirty days from the last insertion. *Ib.*, sec. 7.

SEC. 4344. The length of time that any such note or bond has been due shall be no defense to a recovery therefor, and no statute of limitation shall be a bar or defense to such action. *Ib.*, sec. 11.

SEC. 4345. It shall not be necessary for the prosecuting attorney, or any one else on the part of the state, to make and tender a deed to any of the purchasers of said land before commencing a suit for the purchase money therefor, and a plea or demurrer, setting up that no deed has been tendered, shall be no defense to the suit. *Ib.*, sec. 12.

SEC. 4346. The note, bond or other instrument sued on shall be the only evidence necessary to prove the debt. *Ib.*, sec. 9.

SEC. 4347. In case of actual service upon the defendant all persons, except an actual occupant not served, shall be bound, foreclosed and barred by the proceeding and judgment; and the person in actual possession, if served with process, shall be also bound, foreclosed and barred by such proceeding and judgment. *Ib.*, sec. 8.

SEC. 4348. When the service is by publication the defendant, his heirs, his personal representatives and all other persons, including the person in actual possession of such land, shall be forever bound, foreclosed and barred by such proceeding and judgment (i). *Ib.*

SEC. 4349. All decrees and judgments rendered in the action and proceeding mentioned in this act shall be enforced and collected in the manner provided by law for the enforcement or collection of other decrees and judgments, except that the executions on the same shall be directed to the sheriff of the county where the action is brought. *Ib.*, sec. 13.

SEC. 4350. No error in the proceedings in said cases shall in any way affect any sale made by virtue of any decree or judgment rendered in any of said cases, when the process was served or publication made as provided in this act. *Ib.*, sec. 10.

SEC. 4351. It shall be the duty of the prosecuting attorney, if the land sold in any case does not bring enough to pay off the decree and costs, to take a personal decree against the defendant for the amount unpaid. *Ib.*, sec. 15.

SEC. 4352. No personal decree or judgment shall be rendered against any occupant of the land other than the obligor or maker of the instrument sued on, and his heirs and personal representatives. *Ib.*

FEES OF PROSECUTING ATTORNEY FOR COLLECTING.

SEC. 4353. The prosecuting attorney shall have, and be entitled to, for prosecuting and collecting said claims ten per cent. on the amount of the judgment or decree, which amount shall be taxed to and collected from the defendant as other costs in the suit. *Provided*, that the prosecuting attorney shall employ, at his own expense, such additional counsel in said cases as he may deem necessary for the best interests of the state. And, *provided, further*, that the amount realized from a sale of said lands under the provisions of this act,

(i) See *Haskell v. State*, 31—91.

or any other law authorizing the sale of the same by the state, shall first be applied to the full payment of the amount due the state, including all costs other than said ten per cent., before any portion thereof shall be applied to the payment of said ten per cent. *Ib.*, sec. 16.

REPORT OF PROSECUTING ATTORNEY.

SEC. 4354. The prosecuting attorney shall pay over to the treasurer all moneys collected on said claims, except costs, once every three months, and at the same time make a report in writing, specifying upon what decrees or judgments said money was collected and what land was sold. *Ib.*, sec. 14.

SEC. 4355. All officers and receivers of moneys or bonds of any description whatever, in any department of this state, are hereby prohibited from receiving in payment of notes or bonds executed and delivered for lands belonging to the State of Arkansas, known as swamp and overflowed lands, or internal improvement lands, or of any other class or description of lands whatever, bonds issued under an act of the general assembly of the State of Arkansas, approved March 23, 1871, or any subsequent act authorizing such bonds, known as the levee bonds or auditor's warrants, or interest accruing thereon, to be received in payment for any of the above described lands or notes for sale of the same (†). *Act Dec. 14, 1874.*

CHAPTER XCIV.

LEGAL NOTICES AND ADVERTISEMENTS.

SECTION

4356. To be published in county paper when; what newspapers authorized to publish.
4357. One of several authorized papers may be selected.
4358. Where no such paper is printed in county, any in the state may be selected.

SECTION

4359. Proof of publication; how made; can not be required until payment of printer's fee.
4360. Officer may refuse to publish notice of sale until printer's fee is advanced.
4361. Printer's fee to be taxed as other costs.
4362. Public officer: how paid for advertisement.
4363. Number of insertions, rule.

SECTION 4356. When a legal publication of any character is required by existing or future laws, or the order of any court, or the provisions of any deed of trust, mortgage or other agreement, or by any state, county, district, township or municipal officer, to be made by advertisement in a newspaper printed in this state, it shall be published in some daily or weekly newspaper printed in the county where the suit or proceeding is pending, or where the land, property or subject of the proceeding or publication is situated. *Provided*, there be any newspaper printed in the county having a *bona fide* circulation therein, which shall have been regularly published in said county for the period of one month next before the date of the first publication of said advertisement.

(†) See *Smith v. Garth*, 31—17; *Woodward v. Campbell*, 39—580.

SEC. 4357. If there be more than one such newspaper published in a county, then the officer, litigant or individual, or the attorney of record, or agent of such person, whose duty it is to cause or direct such publication, may select any newspaper authorized by the proviso to section 4356 as the medium of publication of such advertisement.

SEC. 4358. If there be no such newspaper printed in a county, and there be occasion for publishing any such legal advertisement, then the person whose duty it is to cause such publication to be made, as aforesaid, may select any newspaper printed in this state, and having a circulation therein, which is duly authorized to publish the same.

SEC. 4359. The affidavit of any editor, publisher or proprietor, or the principal accountant of any newspaper authorized by this act to publish legal advertisements, to the effect that a legal advertisement has been published in his paper for the length of time and number of insertions it has been published, with a printed copy of such advertisement appended thereto, subscribed before any officer of this state authorized to administer oaths, shall be the evidence of the publication thereof as therein set forth. *Provided*, that no editor, publisher, proprietor or principal accountant of a newspaper shall be required to make such affidavit, or deliver such proof of publication, to the person ordering the said advertisement published until the cost of said affidavit, and the legal printer's fee therefor, shall have been first paid (*).

SEC. 4360. The printer's receipt for the cost of proof and fee for printing shall be attached to such proof of publication, and the amount thereof shall be taxed and collected as other costs of the case.

SEC. 4361. Any officer who levies on goods or chattels, lands or tenements, or is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a notice of sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer money sufficient to discharge the legal fees of the printer for publishing such notice. *Act Feb. 15, 1875.*

SEC. 4362. When any advertisement shall be made by a public officer in pursuance of law, the reasonable expense thereof shall be allowed and paid out of the county or state treasury, as the case may require.

SEC. 4363. In all cases when, by any law or order of court, any advertisement shall be directed to be published, and shall not specify any number of publications, it shall be taken and intended that such advertisement or publication shall be published but one time. *Rev. Stat., chap. 6, secs. 3 and 5.*

(*) For rates of printers' fees, see SECS. 3274, 3275.

CHAPTER XCV.

LEVEES AND CUT-OFFS (*).

SECTION

- 4364. Levee districts; county courts may form in counties subject to overflow.
- 4365. Districts may be laid off at any regular term of court.
- 4366. No district to be formed without notice of application therefor; notice how given.
- 4367. Levee directors and assessors; court to fix day for electing.
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- 4373. Court to designate levee districts by name or number.
- 4374. Duties of levee directors.
- 4375. Rules for assessing lands.
- 4376. Assessment book; lands how to be entered and described on.
- 4377. Meeting of land-holders; what notice to be given.
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SECTION

- 4380. Right of way; how procured.
- 4381. Assessment of damages.
- 4382. Contractor's bond; conditions of.
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- 4384. Cost of work and tax; how to be assessed on lands.
- 4385. Assessment to be a lien on lands, etc.
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- 4387. Who to be made parties defendant to such suits.
- 4388. Who to conduct suits; act to be liberally construed.
- 4389. Official oath of assessors and directors.
- 4390. Their term of office.
- 4391. Non-resident land-holders may vote, and cast their ballots by agents.
- 4392. Compensation of directors, assessors, engineer and surveyor.
- 4393. Tax to pay expenses, repair levees, etc.; how levied; limit of same.
- 4394. Warrants of directors; how drawn.
- 4395. Powers of directors.
- 4396. Levee districts to issue no bonds, notes or other evidences of debt.

CUT-OFFS.

- 4397. Proceedings to restrain the making of.

SECTION 4364. The county courts of the several counties in this state containing lands subject to overflow may divide the territory of their respective counties subject to overflow into one or more districts, having reference to the locality of the land and the character of the river front, including in each of said districts, as near as possible, all the lands subject to overflow from the same crevasses or direction, and which can be protected by the same system of levee.

SEC. 4365. The court may lay off such levee districts at any regular term.

SEC. 4366. No such district shall be formed, unless notice of an intention to apply therefor be first given, by posting written notices in three public places in the limits of the proposed district, at least ten days before the formation of said district; said notice may be given by any land-holder in said district, or by order of the court made at a preceding term.

(*) The building and repairing of levees in the County of Chicot, and in "all that part of Desha County included in a line running from the north-east corner of Chicot County up the Mississippi River to Cypress Creek; thence up Cypress Creek and along Red Fork Bayou and Boggy Bayou to Amos Bayou, so as to include the line of levee from Amos Bayou to and down the south bank of Cypress Creek as built in 1860, and thence up Amos Bayou to range line between two (2) and three (3) west; thence south on said line to the line between Chicot and Desha Counties, and thence along the line between the said counties to the point of beginning," is provided for and regulated by the act of March 21, 1883, and the act supplemental thereto, approved March 31, 1883; and the provisions of this chapter, which are taken from the act of March 20, 1879, are not in force within the limits of Chicot County, nor in that part of Desha County described in this note. See *acts of 1883*, pp. 163, 312.

SEC. 4367. At the term of the court at which said districts may be laid off, or at any future term, the said court shall designate and fix a day of election for three directors of levees and three assessors of lands in each of said districts, and shall appoint three judges of election to hold said election.

SEC. 4368. Said election shall be held in accordance with the general election laws of the state, except that none but land-holders of said district and mortgagees in possession after condition broken shall be allowed to vote at said election, or be eligible to election to either of said offices, or to act as judges at said election, except that guardians duly appointed and who shall have given bond and received letters of guardianship of infant heirs, or insane persons, owning land in said district, may vote in right of their respective wards.

SEC. 4369. The judge of said election shall open the polls, appoint two clerks of election, and proceed to hold said election by ballot, and keep the polls open until sundown of said day, and shall cause poll-books to be kept and the name of each voter to be recorded with the number of his ballot; the ballots shall be counted, and the result of said election shall be declared and recorded and the returns signed by the judges and clerks of said election, and the same shall be sealed up and directed to the judge of the county court; the ballots also shall be sealed up in a separate envelope, and said returns and ballots shall be deposited in the clerk's office of said county by one of the judges of said election within five days after said election is held.

SEC. 4370. If it be more than ten days to a regular term of said court after said election is held, the judge of the county court shall hold a special term of said court within ten days of said election, at which the returns shall be opened by the court and clerk, who shall constitute the board of canvassers to canvass the votes at said election and declare the result, and the three persons having the highest number of votes in said district for directors shall compose the board of levee directors for said district; and the three persons having the highest number of votes for assessors shall compose the board of assessors of said district.

SEC. 4371. Said court shall cause an order to be entered on its minutes reciting said election, and the names of the persons so found to be elected to said offices, and shall give to each of said persons a certificate of his election, attested by the clerk and the seal of said court.

SEC. 4372. In case any person voted for at said election shall contest the election of either of said officers, he shall commence proceedings within ten days after the result of said election is declared by said court, and said contest shall be conducted in the same manner and governed by the same laws as is now, or hereafter may be, prescribed for contesting the election of constable.

SEC. 4373. The said court shall designate a number or name for each of said districts, and said district shall be known and designated by such number or name, thus: Levee District No. —, County —, Levee District — County.

SEC. 4374. It shall be the duty of the said board of directors to determine what work is necessary to be done, or levees to be constructed, to protect their said district from overflow. They shall cause accurate surveys of all work deemed necessary by them, and accurate estimates and calculations, to be made by some suitable and competent engineer or other person, who shall make a written report thereof, showing the amount, character and kind of work, the exact

location thereof and the probable cost thereof, and return the same with all plans and specifications to the board of directors.

SEC. 4375. Said assessors shall then assess the value of lands in said district subject to overflow and benefited by said work, having reference to the value of said land without said work, and the value thereof as benefited by said work, and shall assess the value thereof as improved by said work in an assessment book to be provided for that purpose.

SEC. 4376. Said lands shall be entered upon said book in the smallest subdivision, as surveyed by the United States government, with appropriate columns showing the names and residence of the owners of said land, and of any person holding recorded liens or incumbrances thereon; also, the description of said land and number of acres, whether the same is cleared or uncleared, or the number of acres cleared and the number of acres uncleared, if the same shall be partly cleared and partly uncleared, the value thereof as assessed by them without the work and the value thereof as improved by the work.

SEC. 4377. The board of directors shall then call a meeting of all the land-holders of said district, at some place convenient to some part of said work, and shall give at least five days' notice of the time and place of said meeting, by written or printed handbills, put up in ten public places in said district, and that the estimates of the surveyor and the list of the assessors will be submitted to said meeting for action, and requiring the owner of said lands, and the holders of any lien thereon, to show cause at said meeting why said lands shall not be assessed with their proportional part of the cost of such work.

SEC. 4378. At such meeting the report and the estimates of the engineers and the assessment of the assessors shall be laid before the land-holders present, an estimate of the probable cost of said work, and the probable rate per centum thereof on the valuation of said lands as increased by said work as will be necessary to pay for said work, shall be made known to the land-holders present, and a vote shall then be taken whether the work shall be done; *provided, however*, that no vote shall be taken unless two-thirds of the owners of said land, either by themselves or their agent or attorney, authorized to act for them, be present, and three-fourths of those present shall vote for said work.

SEC. 4379. If it shall be decided at said meeting, in the manner aforesaid, to do said work, the directors shall proceed to let the same out to the lowest and best bidder; *provided, however*, that said directors shall have the right to reject all bids if the same shall be deemed too high.

SEC. 4380. Before said work is let said board of directors shall procure the right of way over all lands belonging to private persons, not heretofore used for a levee, and, in case they can not get a gratuitous relinquishment of such right, they shall report the lands and the owners' names to the county court of such county, and give notice to the owner or owners of such land, or to his or their agent, that they will apply to such court, on a day therein to be mentioned, for a jury to assess the damages which will be sustained by reason of said levee; *provided*, if the owner or owners of said land be non-residents of such county, and have no known agent residing therein, said notice shall be posted on some conspicuous place on said land.

SEC. 4381. Said court, on the application of said directors, upon proof that such notice has been given, shall, on or after the day mentioned in said notice, order a jury of twelve land-holders to be summoned by the sheriff of said county

to assess the damages such land-holders shall sustain, on a day to be named in said order; said jury shall assess the damages such land-holder will sustain, after being duly sworn, to well and truly assess the same according to the best of their judgment and ability, and shall make a return thereof to said court; and the damages so assessed shall be paid to such owner or owners, or deposited to their credit with the treasurer of said county.

SEC. 4382. The contractors shall give bond to the said directors in a sum sufficient to secure the prompt execution of their contract, conditioned to pay any damages which shall result to the land-holders of said district from a failure to perform their said contracts, or by reason of a negligent performance of the same.

SEC. 4383. Said work shall be done by said contractors, under the supervision of said board of directors or any engineers to be selected by them, and, when completed, if performed according to the terms of their contract, and the plans and specifications submitted to said meeting of land-holders, shall be received and accepted by said board of directors.

SEC. 4384. Said board of assessors shall make an assessment of the cost of said work upon the land situated in said district benefited by said work, and reported to said meeting of land-holders upon the value of said lands as increased by said work, and shall also make a list of said lands as assessed, showing the owner's name, the description of the land, the number of acres, the valuation thereof as increased by said work and the tax assessed thereon, and file the same in the clerk's office of the county court of such county, and shall also make a separate list thereof, including in each list all the land belonging to one person, which shall be signed by said assessors and indorsed by said directors; and the same shall be delivered to said contractors in payment for said work within thirty days after the completion thereof.

SEC. 4385. Said assessment shall be a lien on said lands in the nature of a mortgage, and shall bear interest at the rate of six per centum per annum from thirty days after the assignment of said list to said contractors until paid.

SEC. 4386. If said assessments are not paid within thirty days after the assignment of said lists to said contractors, the said contractors may enforce the collection thereof by chancery proceedings in the court of the county in which said district is situated having chancery jurisdiction; and said court shall give judgment against the owner of said land for the amount of said assessment and the interest thereon, and damages at the rate of ten per centum on the amount of said assessment, and also all the costs of said proceedings, and cause said lands to be sold by a commissioner to be appointed by said court. Said proceedings and sales shall be conducted in the manner that proceedings and sales are conducted in such courts for the foreclosure of mortgages, except that such sales shall be made for cash; *provided*, said judgment shall not be *in personam*, and shall not extend to any property except the land so charged with said assessment, as hereinbefore provided.

SEC. 4387. All persons having an interest in said lands, or recorded liens thereon, known to the contractor, shall be made parties defendant to said suit, and shall be bound thereby, and by the judgment and decree rendered therein, in the same manner as in other chancery suits, saving to married women, infants and insane persons the rights they now have by law to appear and

except to said proceedings within twelve months after their disabilities are removed.

SEC. 4388. Said suits shall be conducted in the name of said contractors or their assignees, and in accordance with the practice and proceedings of chancery courts in this state; and this law shall be liberally construed to give to said assessment list the effect of *bona fide* mortgages for a valuable consideration and first lien upon such lands as against all persons having an interest therein.

SEC. 4389. All directors and assessors elected under the provisions of this act shall, before they enter upon the discharge of their said duties, take and subscribe the oath required by section 20, article XIX, of the constitution of the state.

SEC. 4390. They shall each hold their office for three years, and until their successors are elected and qualified. *Provided*, that after the first election the county court shall designate one director and one assessor to hold his office for one year, and one of each to hold his office for two years, and one of each for three years, and thereafter one of each of said officers shall be elected by the land-holders of said district on the first Monday of May of each year; *provided*, said directors and assessors shall hold their offices until the first Monday in May after the expiration of one year from their first election.

SEC. 4391. Non-resident land-holders, as well as resident owners, shall be allowed to vote at such elections, and also have a vote in determining when work shall be done, as prescribed in section 4378, and said non-resident land-holders may cast their votes either by themselves or by their agents or attorney in fact duly appointed.

SEC. 4392. The directors and assessors shall each receive the sum of two dollars per day while actually and necessarily engaged in the performance of their duties under this act, and said directors shall be authorized to employ an engineer at a price not to exceed seventy-five dollars per month while actually engaged in the performance of his duties; and said assessors, if necessary to enable them to correctly assess the land of said district, to determine the amount of cleared and uncleared lands on any tract, or where a part of any tract is improved and a part unimproved, may employ a surveyor if they deem it necessary, at a price not to exceed three dollars per day.

SEC. 4393. For the purpose of paying the expenses mentioned in the preceding section, and for keeping the levees in each district in repair, and to meet the incidental and contingent expenses of the district, there shall be levied and collected off the lands, as reported as benefited by said assessors, an annual tax not to exceed five mills on the dollar of the value of such lands as assessed for state and county purposes, to be levied, extended and collected as state and county taxes are now collected by the officer authorized to levy and collect the said tax; said taxes to be extended on the tax-book of the county against the lands so taxable as aforesaid, and to be paid over by the county collector to the treasurer of the county, in coin or legal-tender currency of the United States, to the credit of such levee district, and to be drawn out upon the joint order of all the directors of said district; *provided*, the amount of such tax, not exceeding the rate per cent. aforesaid, shall be voted at a meeting of the land-holders of said district, called by notice given as required by section 4377, at which there shall be present a majority of the land-holders of said district, and two-thirds of those present voting for said tax; and the same so certified

to the county court of said county by the director of said district on or before the day fixed by law for fixing the county levy and making annual appropriations for the county.

SEC. 4394. All warrants drawn by the said directors on the treasurer of the county for any part of the fund provided for in the preceding section shall specify in whose favor the same is drawn, and the salary, services or expenditures for which the same is drawn; *provided*, that no such warrant shall be drawn, or be valid, if drawn, except there be money in the hands of the county treasurer to the credit of said district on account of said fund.

SEC. 4395. The said board of levee directors shall have charge of all the public levees in their said districts, and shall keep the same in repair, and for this purpose shall have power to employ labor and superintend the same. *Provided*, that no repairs shall be made or money expended under the provisions of this section except when authorized by a vote of the land-holders at a meeting to be held in accordance with the provisions of section 4377.

SEC. 4396. Neither said district, or any of the officers or employes thereof, shall ever have power to issue any bonds, notes or other evidences of indebtedness, and no indebtedness shall ever be created, except the salaries of the officers heretofore prescribed, or for work and labor in case of danger as hereinbefore provided, unless there be money in the hands of the treasurer of the county to the credit of said fund. *Act March 20, 1879.*

CUT-OFFS.

SEC. 4397. In order to prevent the commission of the offense specified in section 1688, it is hereby made the duty of the judges of the circuit court of the respective counties in this state on the Mississippi River, in the exercise of equity jurisdiction, upon the petition of any citizen interested, to enjoin the commencement or prosecution of any work in violation of said section, said petition having been first verified by the affidavit of the person making the same, and upon giving bond for costs; in which petition as many citizens as choose may unite, and the same shall be taken and considered to be and shall proceed as a suit upon this petition in behalf of this state. *Act Jan. 15, 1857.*

CHAPTER XCVI.

LIENS.

- I. OF VENDORS.—Sec. 4398.
 II. OF MECHANICS.—Sec. 4402.
 III. OF LABORERS AND EMPLOYERS.—Sec. 4425.
 IV. OF LANDLORDS.—Sec. 4453.
 V. OF LIVERY STABLE KEEPERS.—Sec. 4463.
 VI. OF OWNERS OF JACKS OR STALLIONS.—Sec. 4468.

I.—VENDORS' LIENS (*).

SECTION

4398. Property in possession of vendee, when action brought for purchase money, not exempt.
 4399. Proceedings for attaching property.

SECTION

4400. Defendant may retain property by giving bond.
 4401. When property can not be seized, defendant may be compelled to appear, etc.

SECTION 4398. In any action brought in the courts of this state for the recovery of money contracted for property in possession of the vendee, it shall not be lawful to include said property in any schedule intended to protect said property, or exempt it from seizure on attachment or sale on execution or other process issued from any court for the collection of any debt upon the claim of the plaintiff.

SEC. 4399. In any such action the court or clerk shall issue, on petition of the plaintiff, duly verified, describing the property and stating its value, at or after the commencement of such action, an order, which may be embodied in the original summons, stating the name of the court and the style of the action, and directing the sheriff or other officer to take the property described in the petition, and hold the same subject to the orders of the court (a).

SEC. 4400. The defendant may give bond for the retention of the property, as in cases of orders of delivery of personal property (b).

SEC. 4401. When it appears by affidavit of the plaintiff, or by the return of the order of the court, or when it is shown by the plaintiff's petition, that the property has been disposed of, or concealed so that the order can not be executed, the court may compel the attendance of the defendant, and examine him on oath as to the situation of the property, and punish a disobedience of its order as in cases of contempt. *Act March 9, 1877.*

(*) See art. IX, sec. 1, *Const.*

(a) The lien given by this act is not personal to the vendor, but passes to the assignee of the note given for the property. *Creanor v. Creanor*, 36—91.

(b) Under this statute there can be no summary judgment against the sureties on the delivery bond. *Creanor v. Creanor*, 36—91. The bond is absolutely for the payment of the judgment, and can not be avoided by an offer to return the property, or by a plea that the vendor had no title to it. *Mayfield v. Creamer*, 39—460.

II.—MECHANICS' LIENS.

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SECTION 4402. Every mechanic, builder, artisan, workman, laborer or other person who shall do or perform any work or labor upon or furnish any materials, machinery or fixtures for any building, erection or other improvement upon land, including contractors, sub-contractors, material furnishers, mechanics and laborers, under or by virtue of any contract, express or implied, with the owner or proprietor thereof, or his agent, trustee, contractor or sub-contractor, upon complying with the provisions of this act, shall have for his work or labor done, or materials, machinery or fixtures furnished, a lien upon such building, erection or improvement and upon the land belonging to such owner or proprietor on which the same is situated, to secure the payment of such work or labor done, or materials, machinery or fixtures furnished (c).

SEC. 4403. Every sub-contractor wishing to avail himself of the benefits of this act shall give notice to the owner or proprietor, or his agent or trustee, before or at the time he furnishes any of the things aforesaid, or performs any of the labor, of his intention to furnish or perform the same, and the probable value thereof; and, if afterward the things are furnished or labor done, the sub-contractor shall settle with the contractor therefor, and having made the settlement in writing, the same, signed by the contractor and certified by him to be just, shall be presented to the owner or proprietor, or his agent or trustee, and left with him, and within sixty days from the time the things shall have been furnished, or the labor performed, the sub-contractor shall file with the clerk of the circuit court of the county in which the building, erection or other improvement is situated a copy of the settlement between him and the contractor, which shall be a lien on the building, erection or other improvement for which the things were furnished, or the labor performed, and shall at the time file a correct description of the property to be charged with the lien, the correctness of all which shall be verified by affidavit.

SEC. 4404. In case the contractor shall for any reason fail or refuse to make and sign such settlement in writing with the sub-contractor when the same is demanded, then the sub-contractor shall make a just and true statement of

(c) A mechanic's lien is not forfeited by levying an attachment or taking a mortgage on the property. *Roberts v. Wilcorson*, 36—355. The fact that the property is in the hands of a receiver is no defense to an action to enforce a mechanic's lien. *Richardson v. Hickman*, 32—406. The lien of the material man does not depend on any contract with the owner of the improvement, but grows out of the use of the material furnished. *Cohn v. Hager*, 30—25. As between the mechanic and the owner of the improvement, an exact compliance with the statutory requirements is not essential. *Murray v. Rapley*, *Ib.*, 568.

work and labor done or things furnished by him, giving all credits, which he shall present to the owner or proprietor, his agent or trustee, and shall also file a copy of the same, verified by affidavit, with the circuit clerk, as provided in section 4403.

SEC. 4405. The certificate of settlement made as aforesaid, or the statement of the sub-contractor, shall be a justification to the employer in withholding from the contractor the amount appearing thereby to be due to the sub-contractor until he is satisfied the same has been paid, and the employer shall become the surety of the contractor to the sub-contractor for the amount due for such work and labor done or things furnished, not, however, exceeding the value thereof, as notified under section 4403.

SEC. 4406. It shall be the duty of every person, except as has been provided for sub-contractors, who wishes to avail himself of this act, to file with the clerk of the circuit court of the county in which the building, erection or other improvement to be charged with the lien is situated, and within ninety days after all the things aforesaid shall have been furnished, or the work or labor done or performed, a just and true account of the demand due or owing to him, after allowing all credits, and containing a correct description of the property to be charged with said lien, verified by affidavit (d).

SEC. 4407. It shall be the duty of the clerk of the circuit court to indorse upon every account the date of its filing, and make an abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of the filing, the name of the person laying or imposing the lien, the amount of said lien, the name of the person against whose property the lien is filed and a description of the property to be charged with the same, for which he shall receive the sum of one dollar from the person laying or imposing the lien, which shall be taxed and collected as other costs, in case there be suit thereon.

SEC. 4408. The liens for work or labor done, or things furnished, shall be paid *pro rata*, except that the lien of a sub-contractor shall be preferred to that of a contractor. Liens under this act shall be preferred to all other liens and incumbrances attached to or upon such building, erection or other improvement, and to the land on which the same is situated, made subsequent to the commencement of such building, erection or other improvement.

SEC. 4409. All the right and title of the defendant to the land on which any building, tenement or edifice shall be erected, as well as to a convenient space around the same, not exceeding two acres clear of the building, tenement or edifice, shall also be subject to the liens filed by virtue of the provisions of this act, and such right and title shall be sold with the building, tenement or edifice as part of the property charged with the lien (e). *Act April 25, 1873.*

SEC. 4410. The sale of such property charged with a lien shall not affect or in any wise impair prior incumbrances against the property, whether created by judgment, deed, mortgage or any other instrument of writing authorized to be recorded, if such incumbrance shall have been created and duly recorded previous to the time when said artisans, builders and mechanics commenced

(d) The lien must be filed within ninety days. *White v. Chaffin*, 32—59. When the lien is filed, it relates back to the time of supplying the machinery, and is superior to intervening incumbrances. *Ib.*

(e) The lien is confined to two acres of land. *White v. Chaffin*, 32—59.

work on or furnished materials for such building, tenement or edifice, or if such artisans, mechanics and builders had actual notice of such incumbrance at the time aforesaid.

SEC. 4411. In either of the cases aforesaid, the said property shall be sold subject to such incumbrances. *Act Jan. 31, 1843, secs. 21 and 22.*

SEC. 4412. All liens created by virtue of this act shall be enforced in the circuit court of the county wherein the property on which the lien is attached is situated, and any person having such lien may enforce the same in said circuit court, without regard to the amount thereof (f).

SEC. 4413. The petition, among other things, shall allege the facts necessary for securing a lien under this act, and a description of the property charged therewith (†).

SEC. 4414. In all suits under this act, the parties to the contract and all other persons interested in the matter in controversy, and in the property charged with the lien, may be made parties, but such as are not made parties shall not be bound by any such proceedings.

SEC. 4415. The court shall make such orders in the case as will protect and enforce the rights of all interested therein.

SEC. 4416. The court shall ascertain by a trial in the usual way the amount of indebtedness for which such lien is established, and render judgment for the same. The judgment, if for plaintiff, shall be, that he recover the amount of the indebtedness found due, to be levied out of the property charged with the lien therefor, which said property shall be correctly described in the judgment.

SEC. 4417. The execution to be issued shall be a special *fieri facias*, and shall be in conformity with the judgment, and shall be returnable as ordinary executions.

SEC. 4418. All suits under this act shall be commenced within six months in case of sub-contractors, and nine months in other cases, from the time of filing the account or statement as aforesaid, and not after, and be prosecuted without unnecessary delay to final judgment.

SEC. 4419. Every person, including all *cestuis que trust*, for whose immediate use, enjoyment or benefit any building, erection or other improvement shall be made, shall be included by the words "owner or proprietor" thereof, under this act, not excepting such as may be minors over the age of eighteen years or married women.

SEC. 4420. Whenever any indebtedness which is a lien on any such real estate, erection, building or other improvement shall be paid and satisfied, it shall be the duty of the creditor to enter satisfaction of said lien upon the record or margin thereof, in the office of the clerk of the circuit court; any creditor refusing or neglecting so to do for ten days after payment shall be liable to any person injured to the amount of such injury and for costs of suit.

SEC. 4421. In case any sub-contractor shall not have notified the owner, proprietor, his agent or trustee, before furnishing the things aforesaid, or doing work and labor, as provided for in section 4403, but shall furnish to him the account as provided in said section, or the statement provided for in section 4404,

(f) Suit may be brought in the circuit court, though the amount of the lien be less than \$100. *White v. Milbourne*, 31—486.

(†) See *Chaffin v. McFadden*, 41—42.

and in all other respects shall comply with the provisions of this act, he shall have the benefit hereof the same as if he had given notice as required herein, to the extent, and only to the extent, that such owner or proprietor can safely, with his engagements and liabilities on account of such building, erection or other improvement, withhold any amount by him owing to his contractor for such sub-contractor.

SEC. 4422. All persons furnishing things or doing work provided for by this act shall be considered sub-contractors, except such as have contracts therefor directly with the owner, proprietor, his agent or trustee.

SEC. 4423. The lien herein given shall be transferable and assignable.

SEC. 4424. Nothing herein contained shall be so construed as to give a sub-contractor or laborer, or material furnisher, a lien for any greater amount than that originally contracted for between the employer and contractor. *Act April 25, 1873.*

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SECTION 4425. Laborers who perform work and labor for any person under a written or verbal contract, if unpaid for the same, shall have an absolute lien on the production of their labor for such work and labor (g).

SEC. 4426. Every person who has such lien, and wishes to avail himself of the same, shall make a sworn statement of the amount due after all just credits are given, to the best of his knowledge and belief, and the kind of service, and for whom rendered and materials furnished.

(g) For penalty for removing property subject to such lien, see SEC. 1695. One who raises a crop upon the land of another for an agreed share is a laborer and not a tenant, and is entitled to a lien. *Burgie v. Davis*, 34—179. The laborer's lien given by this act is personal and not assignable; it must arise out of contract; and the laborer must bring himself strictly within the statute. The first nine sections apply only to movable property. The remedy is summary and should be strictly construed. *Dano v. M. O. & R. R. Railroad Co.*, 27—564.

Hay is the production of the laborer who cuts and rakes the grass, and he has a lien on it for the price or value of his labor. *Emerson v. Hedrick*, 42—263.

SEC. 4427. Said statement shall also contain a list of land, property, crops or other productions of his labor charged. The truth of the sworn statement may be put in issue as in cases of attachment.

SEC. 4428. In suits before justices, the justice shall cause notice to be given to the defendant in the usual way; or, if the defendant is a non-resident, said notice shall be given by at least two insertions in a newspaper, as prescribed by law (†), or by posting three notices—two in the most public places in the township where the property is, and the other at the county clerk's office—to appear and show cause why judgment shall not be rendered and the property sold; said notice to be given at least ten days before the day of trial, and it shall be accompanied by a copy of the sworn statement of the plaintiff; but if said suit shall be brought in the circuit court, said statement shall be sworn to before the clerk of the circuit court, and the defendant shall have thirty days' notice before the day of trial.

SEC. 4429. The court or justice shall keep the statement on file, and the justice, if the case is pending before a justice, shall enter a brief statement of the case on his judgment docket.

SEC. 4430. At the same time the notice is given to the defendant, the sheriff or constable shall take charge of the property as described in the statement of the plaintiff, and hold it subject to the decision of the court as in cases of attachment.

SEC. 4431. Either party may, upon request, have the case tried by a jury.

SEC. 4432. If the amount adjudged to be due is not paid, with the costs of suit, on the day of trial, the sheriff or constable shall immediately advertise the property charged for sale at public auction, and sell in not less than fifteen days nor more than twenty-five days from the date the judgment is rendered.

SEC. 4433. In all cases where the property charged does not sell for enough to satisfy the judgment rendered, with all costs of suit, in favor of the claimant, execution may issue upon such judgment in the same manner as on an ordinary judgment at law against any other property of the defendant.

SEC. 4434. Where there are several liens for labor on the same land, crop or property of the same date, or which are equally just, and not enough to satisfy all the claims, the sale will be made and the costs paid, and the money divided *pro rata* among the several claimants.

SEC. 4435. The court shall make the *pro rata* division as provided for in the foregoing section, and shall make the proper credits on the execution.

SEC. 4436. Liens under the provisions of this act are in full force and effect from and after the time the labor is performed.

SEC. 4437. In selling buildings under the provisions of this act, a reasonable amount of land will be sold with them, not to exceed two acres, surrounding the building (h).

SEC. 4438. The officers making the sale shall make out the necessary bill of sale or deed.

SEC. 4439. Proceedings under this act shall be commenced within eight months after the work is done. *Provided*, that the employer may bring the

(†) See SECS. 4356-4360.

(h) This section impliedly gives laborers a limited lien on land for buildings erected thereon under contract. *Taylor v. Hathaway*, 29-397.

laborer to settlement before a proper officer any time after the labor is performed by giving the laborer or his agent ten days' notice.

SEC. 4440. No real estate shall be exempt from sale under an execution on a laborer's lien (i). *Act July 23, 1868.*

LIENS UNDER WRITTEN CONTRACTS, ETC.

SEC. 4441. Contracts made with laborers or employers beyond the limits of this state for labor or services to be performed in this state shall be as binding as if entered into within the state.

SEC. 4442. Contracts for services or labor for a longer period than one month shall not entitle the parties to the benefits of this act, unless in writing signed by the parties, witnessed by two disinterested witnesses, or acknowledged before an officer authorized by law to take acknowledgments.

SEC. 4443. Such officer shall state in his certificate that he read the contract aloud in the presence and hearing of the laborers. For taking such acknowledgment and making such certificate, he shall be entitled to twenty-five cents. *Provided*, not more than three laborers sign one contract; if more than that number, then he shall receive ten cents for each additional laborer who shall sign and acknowledge the same, and five cents per circular mile for traveling to and from the place of acknowledgment. Contracts of married women, executed as above and approved by their husbands, shall be binding.

SEC. 4444. The contract of a minor, when approved by the parent having control of such minor, or, in case there be no parent, when approved by his guardian, or the contract of any minor over fifteen years of age having neither parent or guardian, shall be binding. *Provided*, that a contract with such minor shall not be for a longer period than one year.

SEC. 4445. Specific liens are hereby reserved upon so much of the produce raised, and articles constructed or manufactured, by laborers during their contract as will secure all moneys, and the value of all supplies furnished them by the employers, and all wages or shares due the laborer; and if either party shall, before settlement, dispose of or appropriate the same without the consent of the other, so as to defraud him of the amount due, such party shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined not exceeding one hundred dollars and confined in the county jail not less than one nor more than six months. *Provided*, that nothing in this section shall be construed as forbidding the laborer from mortgaging so much of his crop for necessary supplies as may be equal to his interest therein at the time, if the employer, having contracted to furnish such supplies, fails or refuses to do so.

SEC. 4446. A copy of such contract, or the original, shall be filed in the recorder's office of the proper county, and such filing shall be sufficient notice of the existence of such lien, and no third party shall be prejudiced by the existence of such lien, nor in any manner liable under the provisions of this act, unless a copy of the contract is filed in the recorder's office as above provided.

SEC. 4447. The recorder shall keep, in a suitable book, a convenient index of all such contracts filed in his office, showing the names of the parties, the

(i) See art. IX, sec. 3, *Const.*

date of filing, the date of contract and the time when the lien will expire, and he shall receive twenty-five cents for filing every such contract, and ten cents per name for indexing same, for every laborer signing same more than three.

SEC. 4448. If any employer shall, without good cause, dismiss a laborer prior to the expiration of his contract, unless by agreement, he shall be liable to such laborer for the full amount that would have been due him at the expiration thereof, and such laborer shall be entitled to the lien provided in section 4445 for the enforcement of such liability.

SEC. 4449. If any laborer shall, without good cause, abandon his employer before the expiration of his contract, he shall be liable to such employer for the full amount of any account he may owe him, and shall forfeit to his employer all wages or share of crop due him, or which might become due him from his employer.

SEC. 4450. Proceedings for the enforcement of liens herein provided shall be governed in the circuit court by the law regulating mechanics' liens, and before justices of the peace by the law regulating attachments before justices.

SEC. 4451. If any one shall willfully interfere with, entice away, knowingly employ or induce a laborer or renter who has contracted as herein provided to leave his employer or the place rented before the expiration of his contract, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty nor more than two hundred dollars, and, in addition to such fine, he shall be liable to the employer in double the amount of damages which such employer or landlord may suffer by such abandonment.

SEC. 4452. When no written contract is made under this act, the employer shall have a lien upon the portion of the crop going to the employe for any debt incident to making and gathering the crop owing to such employer by such employe, without any necessity for recording any contract of writing giving such lien, and in such case no mortgage or conveyance of any part of the crop made by the person cultivating the land of another shall have validity, unless made with the consent of the employer or owner of the land or crop, which consent must be indorsed upon such mortgage or conveyance. *Provided*, no such indorsement shall bind the party making it to pay the debt unless expressly so stipulated. *Act March 21, 1883.*

IV.—LANDLORDS' LIENS.

SECTION

4433. Landlord has lien on crop for rent due.
 4454. When lien of tenant's employes has precedence over landlord's.
 4455. Sub-renters, how far responsible.
 4456. How lessee may collect rent from sub-tenant.
 4457. Payment to lessee, how to be credited.

SECTION

4458. Penalty for collecting rent from sub-tenant unlawfully.
 4459. When landlord's lien may be enforced by attachment.
 4460. Affidavit to be filed before attachment.
 4461. How writ levied.
 4462. Rent not due, proceedings stayed.

SECTION 4453. Every landlord shall have a lien upon the crop grown upon the demised premises in any year for rent that shall accrue for such year, and such lien shall continue for six months after such rent shall become due and payable (j). *Act July 23, 1868, sec. 1.*

SEC. 4454. Whenever any landlord shall indorse upon any written agreement made by and between his tenant and the employes of such tenant his written consent to the terms of such agreement, then, and in that case only, shall the lien of such employes have precedence over that of the landlord, and that only for the compensation specified in such agreement, the services therein specified having been rendered toward the production of the crop against which the landlord's lien attaches. *Act Jan. 8, 1875, sec. 2.*

SEC. 4455. Any person sub-renting lands or tenements shall only be held responsible for the rent of such as are cultivated or occupied by him. *Act July 23, 1868, sec. 1.*

SEC. 4456. It shall not be lawful for any one who has leased lands from one person and sub-let any portion thereof to another to take or collect any rent from such sub-tenant before final settlement with the landlord, without first having obtained from such landlord or his agent and delivered to such sub-tenant a written direction, stating the amount of rent authorized to be collected from such sub-tenant.

SEC. 4457. If, afterward, the principal tenant shall fail to pay to the landlord his rent due, the amount paid by such sub-tenant upon such written direction shall be deducted from the *pro rata* amount of rent for which the land cultivated by such sub-tenant would otherwise be liable to such landlord under existing laws.

SEC. 4458. Every principal tenant or his agent who shall, without first having settled with the landlord or produced and delivered such written direc-

(j) The landlord's lien does not pass to an assignee of the rent debt. *Varner v. Rice*, 39—344; *Nolen v. Royston*, 36—561. If the debt is re-assigned to the landlord, the lien revives. *Ib.* The landlord's lien is not extinguished by a refusal to accept a tender of the rent. *Bloom v. McGhee*, 38—329. The lien of a landlord is superior to a mortgage on the crop. *Meyer v. Bloom*, 37—43; *Tomlinson v. Greenfield*, 31—557; *Buck v. Lee*, 36—717; *Lambeth v. Ponder*, 33—707; *Watson v. Johnson*, *Ib.*, 737. Although the assignment of the rent note does not carry the landlord's lien, yet, if the tenant delivers the crop to one holding the rent note as collateral security for a debt due from the landlord, the payment will be upheld as against a mortgagee of the crop. *Ib.* An action by the landlord against one taking the crop with a knowledge of the existence of the lien will be barred in six months after the maturity of the rent. *King v. Blount*, 37—115. A landlord does not waive his lien by taking a mortgage on the crop. *Franklin v. Meyer*, 36—96. The landlord's lien is not lost by the tenant's sale of the crop to a purchaser with notice. *Volmer v. Wharton*, 34—691. A landlord's lien is not assignable. *Roberts v. Jacks*, 31—597. A note executed for rent containing the provision: "This note constitutes a lien on the cotton and corn raised upon said land this year," does not create a lien on the crop. *Ib.* Though the landlord's lien can not be transferred, it can be released. *Buckner v. McIntroy*, 31—631. A purchaser of the crop who buys after it has been removed by the tenant to a gin, and without notice, takes it discharged of the landlord's lien. *Puckett v. Read*, 31—131.

tions as aforesaid, collect or attempt to collect any rent from any such subtenant shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than fifty nor more than five hundred dollars, or by his imprisonment not exceeding six months, or by both such fine and imprisonment. *Act Feb. 19, 1883.*

SEC. 4459. Any landlord who has a lien on the crop for rent shall be entitled to bring suit before a justice of the peace, or in the circuit court, as the case may be, and have a writ of attachment for the recovery of the same, whether the rent be due or not, in the following cases :

First. When the tenant is about to remove the crop from the premises without paying the rent.

Second. When he has removed it, or any portion thereof, without the consent of the landlord.

SEC. 4460. Before such writ of attachment shall issue, the landlord, his agent or attorney, shall make and file an affidavit of one of the above facts, that the amount claimed, which shall be therein stated, is or will be due for rent, or will be the value of the portion of the crop agreed to be received as rent, stating the time when the same became or would become due, and that he has a lien on such crop for such rent; and he shall file with the justice or clerk, as the case may be, a bond to the defendant, with sufficient security, in double the amount of his claim as sworn to, conditioned that he will prove his debt or demand and his lien in a trial at law, or that he will pay such damages as shall be adjudged against him.

SEC. 4461. Such writ of attachment may be levied on the crop in the possession of the tenant, or any one holding it in his right, or in the possession of a purchaser from him with notice of the lien of the landlord.

SEC. 4462. If the rent shall not be due at the commencement of the suit, the trial shall be stayed until it becomes due, and such attachment may, at any time before final trial, be dissolved in the manner now prescribed by law, and the cause proceed as other suits (k). *Act Dec. 28, 1860.*

V.—LIVERY STABLE KEEPERS.

SECTION

4463. Nature of lien.

4464. Keepers may retain possession for charges.

4465. May sell, when.

SECTION

4466. How sale to be made.

4467. By whom made.

SECTION 4463. Keepers of livery, sale or feed stables, or wagon-yards, shall have a lien for their reasonable charges and costs on all horses, mules or other stock or property left in their charge to be kept, sheltered, fed, sold or otherwise cared for.

SEC. 4464. Such keepers shall be and they are hereby authorized to keep possession of such property until such charges are paid, or tendered to them by the owner thereof.

(k) The lien of the landlord must be enforced in the mode pointed out by the statute. He has no title to the crop by virtue of such lien. *Ephraim v. Dodd*, 24—515.

SEC. 4465. In case any such property shall be left with such keeper, and not be called for by the owner thereof and the charges and costs paid thereon before the charges and costs shall amount to the value thereof and the cost of selling the same, it shall be lawful for such keeper to cause the same to be sold.

SEC. 4466. Such sale shall be at public outcry, after first giving the owner thirty days' actual notice, or constructive notice to be published in a newspaper authorized to publish legal notices (*), specifying the day, hour and place of such sale, and out of the proceeds of such sale shall be paid:

First. The costs and expenses of such sale.

Second. The amount due such keeper for his charges; and the balance, if any, shall be held by such keeper for the use and subject to the order of the owner of the property so sold.

SEC. 4467. All sales of property under this act shall be made by a public and licensed auctioneer, if there be one in the town or city where such sale is made, and, if none, then by a constable of the township in which such stable or yard is situated. *Act April 29, 1873.*

VI.—OF OWNER OR KEEPER OF JACK OR STALLION.

SECTION

4468. Lien of owner or keeper, what.

4469. When such lien attaches, how enforced.

SECTION

4470. Lien may be enforced against property in hands of third party.

SECTION 4468. The owner or keeper of any jack or stallion shall have a lien upon the mares put to any such jack or stallion, and for the care and labor of such owner or keeper in and about the service of such jack or stallion, for the amount of the price at which said mare or mares are put to such jack or stallion.

SEC. 4469. Such lien shall attach after the time of the service of any mare by any jack or stallion, and shall be foreclosed or enforced at any time on or after maturity of the debt as agreed upon by the parties to the contract, and may be enforced or foreclosed in the same manner as laborers' liens are enforced by law.

SEC. 4470. If at any time any mare subject to the lien herein mentioned should be sold or traded to any person not a party to the original contract of service of the said mare, or if any person shall attempt to remove such mare from the county where such service was rendered, the said lien shall not thereby be lost, but the owner or keeper of any jack or stallion to which such mare was put shall be entitled to enforce and foreclose the lien he may have by reason of this act, at once, against such mare in the hands of any person, and may proceed as in actions to enforce a mortgage of or lien upon personal property. *Act April 19, 1873.*

(*) See SECS. 4356-4358.

CHAPTER XCVII.

LIMITATIONS (a).

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- 4471. Of actions for the recovery of lands, saving in favor of infants and others.
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- 4502. Within what time actions may be brought against absconding debtors.
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- 4504. This act not to apply to actions otherwise limited.
- 4505. Indorsement of payment not sufficient proof of.
- 4506. To apply to set-off.

SECTION 4471. No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed. *Provided*, that if any person or persons that are or shall be entitled to commence and prosecute such suit or action in law or equity be or shall be at the time said right or title first accrued, come or fallen within the age of twenty-one years, *femme covert* or *non compos mentis*, that such person or persons, his, her or their heirs, shall and may, notwithstanding said seven years may have expired, bring his or her suit or action, so as such infant, *femme covert* or *non compos mentis*, his, her or their heirs, shall bring the same within three years next after full age, discovery or coming of sound mind. *Provided, also*, that no cumulative

(a) The statute of limitations ceased to run from the sixth day of May, 1861, to the second day of April, 1866, by reason of the civil war. *Hall v. Deuckla*, 28—306, overruling *Bennett v. Worthington*, 24—487. See *Shinn v. Tucker*, 33—423.

disability shall prevent the bar hereby formed and constituted by the saving of this section (b). *Act Jan. 4, 1851.*

SEC. 4472. No entry upon lands or tenements shall be deemed sufficient or valid as a claim unless an action be commenced thereon within one year after such entry, and within seven years from the time when the right to make such entry descended or accrued. *Rev. Stat., chap. 91, sec. 2, and act Jan. 4, 1851, sec. 2.*

SEC. 4473. The right of any person to the possession of any lands or tenements shall not be impaired or affected by a descent cast in consequence of the death of any person in possession of such estate. *Rev. Stat., chap. 91, sec. 3.*

SEC. 4474. All actions against the purchaser, his heirs or assigns, for the recovery of lands sold at judicial sales shall be brought within five years after the date of such sale, and not thereafter; saving to minors and persons of unsound mind the period of three years after such disability shall have been removed (c). *Ib., sec. 35.*

SEC. 4475. No action for the recovery of any lands, or for the possession thereof against any person or persons, their heirs or assigns, who may hold such lands by virtue of a purchase thereof at a sale by the collector, or commissioner of state lands, for the non-payment of taxes, or who may have purchased the same from the state by virtue of any act providing for the sale of lands forfeited to the state for the non-payment of taxes, or who may hold

(b) In equity the statute of limitations need not be pleaded. The court will refuse to enforce stale demands. *Riley v. Norman*, 39—158. The statute is not defensive alone, but confers a title which can be enforced by suit. *Wilson v. Spring*, 38—181; *Logan v. Jelks*, 34—547; *Jacks v. Chaffin*, *Ib.*, 534. Adverse possession once proved is presumed to continue. *Clements v. Lampkin*, *Ib.*, 598; *Wilson v. Spring*, 38—181. The statute does not begin to run against an estate until an administrator is appointed. *Word v. West*, *Ib.*, 243; *McCustian v. Ramey*, 33—141. The statute of limitations pleaded by one defendant does not inure to the benefit of another. *Hall v. Bonville*, 36—491. The statute does not run in favor of a grantee of the tenant by curtesy and against the heir until the expiration of the curtesy. *Banks v. Green*, 35—84. An infant has seven years after coming of age to disaffirm his conveyance. *Kountz v. Davis*, 34—590. Only adverse possession for seven years can bar a mortgage. *Coldeleugh v. Johnson*, *Ib.*, 312; *Hall v. Denckla*, 28—506. Possession of the mortgagor is not adverse. *Ib.* A void patent is sufficient to give color of title. *Logan v. Jelks*, 34—547. Color of title is not necessary to maintain the statute bar to the extent of actual possession. *Ferguson v. Peden*, 33—150. Possession of the heir is not adverse to the widow's claim of dower. *Livingston v. Cochran*, *Ib.*, 294. In computing the time of limitation the day on which the action accrued must be included, and the day the summons is issued excluded. *Shinn v. Tucker*, *Ib.*, 421. Statute did not run during the war. *Worthington v. De Bardekien*, *Ib.*, 651. The statute of limitations ceases at the death of the debtor, and the statute of non-claim commences to run. *Ib.* The statute does not run against a *non compos* seeking to establish a will that has been concealed. *Arrington v. McLemore*, *Ib.*, 759. The possession must be actual, adverse and notorious. *Mooney v. Cooleedge*, 30—640. The fact that the mortgage debt is barred will not prevent a foreclosure of the mortgage. *Birnie v. Main*, 29—591. There must be an open and notorious denial of the mortgagee's title to start the statute to running. *Ib.* The statute runs against the widow's dower in favor of a stranger from the husband's death. *Stidham v. Matthews*, *Ib.*, 650. The vendor may enforce his lien at any time within seven years. *McGhee v. Blackwell*, 28—27. Statute was suspended during the war. *Mer. Nat. Bank v. Gordon*, *Ib.*, 115; *Eddins v. Graddy*, *Ib.*, 500; *Hall v. Denckla*, *Ib.*, 506. An interruption of the possession is a new point from which the statute must run. *Byers v. Danley*, 27—77. The burden of proof is on the plaintiff to prove that the right of action accrued within the statutory period. *McNeil v. Garland & Nash*, *Ib.*, 343. One purchasing from a tenant or trustee can not tack the possession of the latter to his own, unless it is adverse. *Wheeler v. Ladd*, 40—108. Statute does not run against a widow's dower until seven years after the purchase of the land by a stranger. *McWhirter v. Roberts*, *Ib.*, 283; *Webb v. Smith*, *Ib.*, 17. Adverse possession of land for seven years is a defense to an action by a municipal corporation. *Fort Smith v. McKibbin*, 41—45. Burden is on plaintiff to prove bringing of suit within three years after attaining his majority. *Yell v. Lane*, *Ib.*, 53. Adverse possession must be hostile, not permissive. *Pulaski County v. State*, 42—118. As to what will constitute such possession between tenants in common, see *Brewer v. Keeler*, *Ib.*, 289. The saving clause of the statute in favor of married women was not repealed by the act of April 28, 1873, which authorizes them to sue alone, and in their own names. *Hershy v. Latham*, *Ib.*, 305. The statute of limitations will not run against a married woman, nor against her vendee, except from the date of his deed. *Jones v. Freed*, *Ib.*, 357. It will not run against the owner of a reversionary estate until the particular estate be determined. *Ib.*

(c) See *Guyann v. McCawley*, 32—97. This section does not apply to a suit to set aside a judicial sale on the ground of fraud. *Phelps v. Jackson*, 31—272. It has no application to sales under execution. They are not judicial sales. *Hershy v. Latham*, 42—305.

such lands under a donation deed from the state, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the lands in question within two years next before the commencement of such suit or action (d). *Art Jan. 10, 1857, sec. 1.*

SEC. 4476. No action for the recovery of real property, when the plaintiff does not claim title to the lands, shall be brought or maintained when the plaintiff, or his testator or intestate, has been five years out of possession. *Rev. Stat., chap. 53, sec. 20.*

SEC. 4477. Three years' peaceable and uninterrupted possession of the premises immediately preceding the filing of a complaint of forcible entry and detainer or unlawful detainer, under the provisions of chapter LXVII, may be pleaded by any defendant in bar of the plaintiff's demand of possession. *Civil Code, sec. 508, as amended 1871.*

SEC. 4478. The following actions shall be commenced within three years after the cause of action shall accrue, and not after:

First. All actions founded upon any contract or liability, express or implied, not in writing (e).

Second. All actions for trespass on lands (f) or for libels.

Third. All actions for taking or injuring any goods or chattels (g). *Rev. Stat., chap. 91, sec. 6.*

SEC. 4479. The following actions shall be commenced within one year after the cause of action shall accrue, and not after:

First. All actions for criminal conversation, assault and battery and false imprisonment.

Second. All actions for words spoken, slandering the character of another.

Third. All words spoken whereby special damages are sustained. *Ib., sec. 7.*

SEC. 4480. All actions against sheriffs or other officers for the escape of any person imprisoned on civil process shall be commenced within one year from the time of such escape, and not after. *Ib., sec. 8.*

SEC. 4481. All actions against sheriffs and coroners, upon any liability incurred by them, by the doing any act, in their official capacity, or by the omission of any official duty, except for escapes, shall be brought within two years after the cause of action shall have accrued, and not thereafter. *Ib., sec. 9.*

SEC. 4482. All actions upon penal statutes, where the penalty, or any part thereof, goes to the state, or any county, or person suing for the same, shall be commenced within two years after the offense shall have been committed, or the cause of action shall have accrued. *Ib., sec. 10.*

SEC. 4483. Actions on promissory notes, and other instruments in writ-

(d) See SEC. 5791. The statute begins to run from the expiration of the period allowed for redemption, not from the date of the sale. *C. & F. Rd. Co. v. Parks*, 32—131. This provision only applies to an action for the recovery of possession, not to a suit to foreclose a mortgage. *Wright v. Walker*, 30—44.

(e) The statute begins to run in favor of an attorney guilty of negligence or misconduct from the date of the offense. *White v. Keegan*, 32—281. The statute begins to run in favor of an attorney failing to pay over money from the time demand might have been reasonably made. *Whitehead v. Wells*, 29—99. The statute does not begin to run against an attorney's claim for fees until the relation of attorney and client is terminated. *McNeil v. Garland & Nash*, 27—343.

(f) This provision applies to suits against railroads for building levees causing an overflow of the plaintiff's land. *St. Louis, I. M. & S. Ry Co. v. Morris*, 35—622.

(g) In actions of trover, as well as in replevin and detinue, the period of limitation is three years, not five. *Ford v. Ford*, 22—134; *Kurtz v. Kurtz*, *Ib.*, 226, overruling *Ryburn v. Pryor*, 14—509. But there is an exception in favor of infants. *Phipps v. Martin*, 33—207.

ing, not under seal, shall be commenced within five years after the cause of action shall accrue, and not afterward (h). *Act Dec. 14, 1844.*

SEC. 4484. Actions on writings under seal shall be commenced within ten years after the cause of action shall accrue, and not afterward (i). *Act Dec. 14, 1844, sec. 15.*

SEC. 4485. Actions on the official bonds of sheriffs, coroners and constables shall be commenced within four years after the cause of action shall accrue, and not afterward. *Act Dec. 14, 1844, and Rev. Stat., chap. 26, sec. 14.*

SEC. 4486. Actions on the bonds of executors and administrators shall be commenced within eight years after the cause of action shall accrue, and not afterward (*). *Act Dec. 14, 1844.*

SEC. 4487. Actions on all judgments and decrees shall be commenced within ten years after the cause of action shall accrue, and not afterward (j). *Ib.*

SEC. 4488. All actions not included in the foregoing provisions shall be commenced within five years after the cause of action shall have accrued (k). *Rev. Stat., chap. 91, sec. 11.*

SEC. 4489. If any person entitled to bring any action, in this or any other act of limitations now in force, specified, shall, at the time of the accrual of the cause of action, be under twenty-one years of age, or insane, or a married woman, or imprisoned beyond the limits of the state, such person shall be at liberty to bring such action within the time now specified by law, or in this act, for bringing such action, after such disability may be removed (l).

SEC. 4490. This act, and all other acts of limitations now in force, shall apply to non-residents, as well as residents of this state.

SEC. 4491. If any debtor or debtors shall fraudulently abscond from any other state, territory or district to this state, without the knowledge of his, her or their creditor or creditors, such creditor or creditors may commence suit against such absconding debtor or debtors within the times in this act, or any other acts of limitations now in force, prescribed for limiting such action or actions, after such creditor or creditors may become apprised of such residence of such absconding debtor or debtors (m). *Act Dec. 14, 1844.*

SEC. 4492. In actions brought to recover any balance due upon a mutual open account current, the cause of action shall be deemed to have accrued

(h) County warrants are always receivable for taxes, regardless of the date of their issue. *Howell v. Hogins*, 37—110. *Whitthorn v. Jetts*, 39—139; *Daniel v. Askew*, 36—487. If payment of a promissory note is demanded on the third day of grace, and refused, the statute runs from that day; otherwise not till the next day. *Holland v. Clark*, 32—697. Statute does not run on a conditional promise until the contingency has happened. *Perry v. Cunningham*, 40—185.

(i) Sealed instruments executed before the constitution of 1868 are not barred in five years. *Smith v. Carder*, 33—709. The statute of ten years applies to a sealed instrument; five years to an unsealed indorsement thereon. *Andrews v. Simms*, *Ib.*, 771. The constitutional convention of 1874 had the power to restore the ten years statute to instruments under seal not then barred. *Dyer v. Gill*, 32—410. The statute of ten years was revived by the constitution of 1874. *Ib.*

(*) As to when the statute of limitations begins to run against a creditor's bill to open an administrator's account for fraud, see *Hanf v. Whittington*, 42—491.

(j) This section applies to judgments of justices of the peace. *Hicks v. Brown*, 38—469. Probate allowances are not within the statute. *Mays v. Rogers*, 37—155. While a judgment is enjoined the statute does not run, and intermediate executions and payments form new points for the running of the statute. *Lindsay v. Merriell*, 36—545.

(k) The statute of limitations can be pleaded by a county. *Gaines v. Hot Springs Co.*, 39—262. A claim proved against an estate is not subject to the statute until the administration is closed. *Fort v. Blagg*, 38—471.

(l) But as to such disabilities and the cumulation thereof, in actions for the recovery of lands, see the later act of Jan. 4, 1851, SEC. 4471 hereof. Where the statute begins to run during the life of the deviser, no disability in the devisee will stop it. *Bozeman v. Browning*, 31—364.

(m) This section is restricted, by its terms, to absconding debtors, and is not applicable to replevin. *Payne v. Bruton*, 10—53; see also *Smith v. Joyce*, *Ib.*, 460.

from the time of the last item proved in such account (n). *Rev. Stat., chap. 91, sec. 12.*

SEC. 4493. No verbal promise or acknowledgment shall be deemed sufficient evidence in any action founded on contract whereby to take any case out of the operation of this act, or to deprive the party of the benefits thereof (o). *Ib., sec. 14.*

SEC. 4494. No joint contractor or executor shall lose the benefit of this act by reason of any written acknowledgment or promise made and signed by any of the other joint contractors or executors. Nothing in this section contained shall be so construed as to alter, take away or lessen the effect of any payment of any principal or interest made by any person whatever on any such joint contract (p). *Ib., sec. 15.*

SEC. 4495. None of the provisions of this act shall apply to suits brought to enforce payment on bills, notes or evidences of debt issued by any bank or moneyed corporation. *Ib., sec. 18.*

SEC. 4496. If any person entitled to bring any action in the preceding provisions of this act specified die before the expiration of the time herein limited for the commencement of such suit, and such cause of action shall survive to his representatives, his executors or administrators may, after the expiration of such time, and within one year after such death, commence such suit, but not after that period (q). *Ib., sec. 19.*

SEC. 4497. If any action shall be commenced within the times respectively prescribed in this act, and the plaintiff therein suffer a non-suit, or, after a verdict for him, the judgment be arrested, or, after judgment for him, the same be reversed on appeal or writ of error, such plaintiff may commence a new action, from time to time, within one year after such non-suit suffered or judgment arrested or reversed; and if the cause of action survive or descend to his heirs,

(n) The term "mutual open account" means something more than charges on one side and credits of payment on the other. To constitute such an account, there must be mutual credit founded on a subsisting debt on the other side, or an express or implied agreement for a set-off of mutual debts. *McNed v. Garland & Nash, 27—343.*

(o) A written acknowledgment to revive a debt must be an unqualified and unconditional acknowledgment of the debt as a debt due at the time, or it must be an express promise to pay it, which presupposes such an acknowledgment. *State Bank v. Aldon, 9—455; Brown v. State Bank, 10—134; Beebe v. Block, 12—595; Grant v. Ashley, Ib., 762.*

Like all other acknowledgments and promises having legal force and sanction, they must be made to the person to whom the debt is due, or to one authorized to act for him, and with the intent at the time to pay it. *Ringo v. Broofs, 26—540.*

Such acknowledgment of a debt is a removal of the statute bar, and not a new contract. *Harlan v. Bernie, 22—217; Ringo v. Brooks, 26—540.*

A verbal promise does not revive a barred claim, nor does a written promise revive it, but gives a right of action co-extensive with the new promise. *Worthington v. De Bardlekin, 33—651.* Part payment will not remove the statute bar as to third persons. *Mayo v. Cartwright, 30—407.*

(p) Part payment of the debt before the bar attaches forms a new point from which the statute will begin to run. *Trustees, etc., v. Hartfield, 5—551; Biscoe v. Jenkins, 10—110; Durritt v. Trammell, 11—187; Hicks v. Lusk, 19—693; Burr v. Williams, 20—171.* The indorsement upon a note of a part payment as of a date within the statute bar is not of itself proof of payment on the day: such indorsement must be shown to have been made before the bar attached. *Ruddell v. Folsom, 14—213; Aldon v. State Bank, 9—455; Brown v. Hutchings, 14—85; Wood v. Wylds, 11—754; Armistead v. Brooke, 18—521; and see SEC. 4505.* Part payment by one joint debtor before the bar attaches will bind the other joint debtors. Payment by one is payment for all. *Trustees, etc., v. Hartfield, supra; Burr v. Williams, 20—189.* But part payment by one joint debtor after the bar attaches does not revive the debt against the other joint debtors. *Biscoe v. Jenkins, 10—108; Biscoe v. James, Ib., 163; Mason v. Howell, 14—201; Ruddell v. Folsom, Ib., 217; Hicks v. Lusk, supra; Burr v. Williams, 20—172.* Nor does a new promise in writing by one joint debtor, after the bar has attached, take the debt out of the statute of limitations as to the other debtors. *Biscoe v. Jenkins, 10—108; Grant v. Ashley, 12—762; Wooddy v. State Bank, Ib., 780.*

(q) When the statute of limitations has commenced running in the lifetime of the creditor, it does not stop upon his death until administration be granted on his estate. *Brown, adm., v. Merrick & Fenno, 16—612.*

or survive to his executors or administrators, they may in like manner commence a new action within the time herein allowed to such plaintiff. *Ib.*, sec. 21.

SEC. 4498. If any action shall have been commenced within the times respectively prescribed in the provisions of this act, and the defendant in such suit die before judgment, and if the right of action be such as survives against the representatives of the defendant, the plaintiff may commence a new action against the heirs, executors or administrators of such defendant, as the case may require, within one year after such death; or, if no executor or administrator be appointed within the time, then within one year after the letters testamentary or of administration shall have been granted. *Ib.*, sec. 22.

SEC. 4499. When an action commenced within the time prescribed by law shall abate by reason of the death of the plaintiff, if the right of action survive to his representatives, his executor or administrator may, within one year after such death, commence a new action; and if any action so commenced by any executor or administrator abate by the death of the plaintiff, a new action may be commenced by the administrator of the same estate at any time within one year after such abatement. *Ib.*, sec. 23.

SEC. 4500. Whenever the commencement of any suit shall be stayed by an injunction of any court of equity, the time during which such injunction shall be in force shall not be deemed any portion of the time in this act limited for the commencement of such suit. *Ib.*, sec. 24.

SEC. 4501. No person shall avail himself of any disability in this act mentioned unless such disability existed at the time the right of action accrued. *Ib.*, sec. 25.

SEC. 4502. If any person, by leaving the county, absconding or concealing himself, or any other improper act of his own, prevent the commencement of any action in this act specified, such action may be commenced within the times respectively limited after the commencement of such action shall have ceased to be so prevented (r). *Ib.*, sec. 26.

SEC. 4503. When two or more disabilities are existing at the same time the right of action or entry accrued, the limitation herein prescribed shall not attach until all such disabilities are removed. *Ib.*, sec. 27.

SEC. 4504. The provisions of this act shall not extend to any action which is or shall be otherwise limited by any statute; but such action shall be brought within the time limited by such statute. *Ib.*, sec. 28.

SEC. 4505. No indorsement of any payment written upon any instrument, by or on behalf of the party to whom such payment shall be made, shall be deemed a sufficient proof of such payment, so as to take the case out of the operation of this act (s). *Ib.*, sec. 32.

SEC. 4506. The provisions of this act shall be deemed and taken to apply to the case of any demand alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise. *Ib.*, sec. 33.

(r) Under this section the inability of the plaintiff to sue in consequence of any act of the defendant mentioned in this section must exist at the time the cause of action accrues. *Denton v. Brownlee, Homer & Co.*, 24—556.

(s) See note to SEC. 4494.

CHAPTER XCVIII.

LIQUORS—SALE OF, ETC.

SECTION

LICENSE TO SELL—HOW GRANTED OR PROHIBITED.

4507. Unlawful to sell liquors, etc., without license; proviso.
 4508. License to sell in quantities not less than one quart.
 4509. Application for license.
 4510. State and county tax on license.
 4511. Penalty for selling liquors without license.
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 4515. License to be granted or withheld, in what cases.
 4516. License of dram-shops or saloons; payment of license tax, fees, etc.

SECTION

4517. Clerk to keep record of license fees, etc.
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 4519. Penalty for keeping saloon or dram-shop without license.
 4520. Act not to apply to whom.
 4521. Provisions of this chapter, regulating sale of liquors, apply to, what.
 4522. Special acts not repealed.
 4523. What debts for liquors not recoverable at law.

THREE-MILE LAW.

4524. On what petition and where sale of liquors may be prohibited by county court.
 4525. Females competent petitioners.
 4526. Act does not extend to sacramental wines or prescriptions of physicians.
 4527. Penalty for violating sections 4524, 4526.

SECTION 4507. It shall not hereafter be lawful for any person to sell alcohol or any spirituous, ardent, vinous, malt or fermented liquors in this state, or any compound or preparation thereof, commonly called tonics, bitters or medicated liquors, or intoxicating spirits of any character which are used and drank as a beverage in any quantity or for any purpose whatever, without first procuring a license from the county court of the county in which such sale is to be made authorizing such person to exercise such privilege. *Provided*, manufacturers of alcohol, vinous, ardent, malt or fermented liquors can sell in original packages without license. *Provided, further*, that such original packages shall not contain less than five gallons (a). *Act March 8, 1879, sec. 1, as amended by act March 26, 1883.*

SEC. 4508. The several county courts of this state are hereby empowered and authorized to grant license to any person of the age of twenty-one years or more who shall apply therefor, authorizing such person to sell ardent, vinous, malt or fermented liquors, or any compound or preparation thereof, commonly called tonics, bitters or medicated liquors, at any point in any township or ward in any city or town in which there has been a vote in favor of license as provided in sections 4513, 4514 and 4515, in quantities not less than one quart, which license shall continue in force for a period of not more than one year, or twelve calendar months; and all annual licenses shall expire on the thirty-first day of December of each year. *Provided*, licenses may be issued for a period less than one year upon the terms hereinafter provided; and, *provided, further*, it shall not be lawful to allow the same drunk in the house or place of business of the vendor. *Ib., sec. 2.*

(a) It was held in *State v. Kate Marsh*, 37—356, that section 1 of the act of March 8, 1879, was not, in any provision, in conflict with the constitution of the United States.

SEC. 4509. Before the clerk of the county court shall issue any license as provided in sections 4507 and 4508, the applicant therefor shall file his petition specifying the place of sale, which petition shall be verified by the oath of the applicant, and shall also file the receipt of the collector of the county for the amount of money hereinafter required to be paid for such license. *Ib.*, sec. 3.

SEC. 4510. Any person who shall obtain annual license, as hereinbefore provided, shall pay to the collector of the county wherein such license is procured the sum of four hundred dollars as a county tax, and the sum of three hundred dollars as a state tax, and one per cent. upon the amount paid, as collector's fees, and two dollars for each license for clerk's fees, and shall pay the same amount of license and fees for a license for any period less than one year; but no license shall continue in force longer than the thirty-first day of December succeeding the issuing of the same. *Ib.*, sec. 4, and act March 31, 1883, secs. 4, 6.

SEC. 4511. Any person who shall sell either for himself or another, or be interested in the sale of any ardent, vinous, malt or fermented liquors, or any compound or preparation thereof, commonly called tonics, bitters or medicated liquors (b), without the owner or owners thereof shall have previously procured a license authorizing the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in double the amount of license he would by law be chargeable with, and each day of such unauthorized selling shall constitute a separate offense (c). Act March 8, 1879, sec. 5, and act March 31, 1883, sec. 4.

SEC. 4512. The license herein specified shall not authorize the sale of any ardent, vinous or fermented liquors, or any compound or preparation thereof,

(b) As to "compounds," "preparations," "tonics," "bitters" and "medicated liquors," see *Gostorf v. State*, 39—450; *Foster v. State*, 36—258; "brandy peaches," and other fruits preserved in brandy, *Rabe v. State*, 39—204.

(c) See SECS. 5592, 5596, 1926, 1932.

A license dealer may sell his own or another's liquor; and if the owner has license, his agent may sell; but if neither the seller, owner or person interested in the sale has license, all may be guilty. *State v. Keith*, 37—96; *Johnson v. State*, *Ib.*, 98; *Lane v. State*, *Ib.*, 272; *State v. Devers*, 38—517.

But one having no license can not sell the liquor of another who has, except as his agent or employe, and under his license. *Johnson v. State*, 37—98.

For liability of absent partner for illegal sale to a minor, see *Robinson & Warren v. State*, 38—611; *Waller v. State*, *Ib.*, 656.

A druggist can not sell liquor without license, not even as medicine upon the prescription of a physician. *Flower v. State*, 39—209; *Woods v. State*, 36—36.

A license from the United States does not excuse one from obtaining the license required by the law of the state; and a sale, either on a steamboat or on land, without license from the county court of the county, is unlawful. *Pierson v. State*, 39—219.

Indictment.—An indictment for selling liquor without license need not state to whom it was sold. *Johnson v. State*, 40—453; *McCuen v. State*, 19—630; *State v. Purnell*, 16—506. Nor that the defendant was a liquor dealer. No one can sell without license whatever his calling may be. *State v. Butcher*, 49—362; *State v. Stanley*, *Ms. op.*, 1884. Nor that the owner had no license. The seller is presumed to be the owner when nothing to the contrary appears. *State v. Devers*, 38—517. If the sale is made by the accused it may be so charged; if not made by him personally, and he is interested in the sale, it is sufficient to charge that he was interested in it. *Waller v. State*, 38—656. It is sufficient to charge the selling of all kinds of liquor by name in the conjunctive, but not in the alternative. *Pierson v. State*, *Ms. op.*, 1884; *Thompson v. State*, 37—408. Or, in separate counts, the sale of "spirituous liquors" and "intoxicating liquors." *State v. Witt*, 39—216. See also note (b) *ante*, and notes (h) and (i) *post*.

Evidence.—The state is not required to prove that the defendant had no license. This will be taken as true unless disproved. *Flower v. State*, 39—209; *Williams v. State*, 35—430; *Hopper v. State*, 19—143.

The courts take notice that lager beer is malt and fermented liquor as matter of common knowledge. *Waller v. State*, 38—656. Also that whisky is an intoxicating liquor. *Edgar v. State*, 37—219. The state is not required to prove a sale on the particular day named in the indictment. *Fitzpatrick v. State*, 37—373. But see *State v. Nunnally*, *Ms. op.*, 1884.

commonly called tonics, bitters or medicated liquors, at any other point or place than that specified in the license, and shall not authorize the owner of any such, upon a single license, to sell or cause or permit the sale of the same at more than one house or place of business. *Act March 8, 1879, sec. 6.*

SEC. 4513. At each general election for state officers, there shall be submitted to the qualified electors of each county the question as to whether license shall or shall not be granted by the county court of such county for the sale of vinous, ardent, malt or fermented liquors, or any compound or preparation thereof, commonly called tonics, bitters or medicated liquors, in any quantity or for any purpose, within such county, for the two years commencing on the first day of January next ensuing. In voting upon said question, the electors shall have printed or written upon their ballots "For License" or "Against License." *Provided*, this section shall not apply to persons engaged in the manufacture of brandies or liquors in this state who sell them in the original packages only. *Ib., sec. 7, as amended by act March 19, 1881.*

SEC. 4514. Such election shall be held at the same time and place and in the same manner as other elections, and all returns shall be sealed up and forwarded to the county clerk of the proper county, and by him laid before the county court at the next term thereof held thereafter; and if it shall appear that a majority of the votes cast in any township or ward of a city of those voting on that question be cast for license, then it shall be lawful for such county court to grant dram-shop or drinking-saloon license (d), to be given on or after the first day of January following such election, and to continue in force until the succeeding thirty-first day of December. *Provided*, all persons obtaining a license for a less period than one year shall pay the amount herein specified for annual license, and all licenses shall expire on the thirty-first day of December in each year. *Ib., sec. 8.*

SEC. 4515. If, at such election, the majority of the votes cast in any county upon the question be not "for license," then it shall be unlawful for the county court of such county to grant license for the purposes mentioned in the preceding section, at any place within such county, until after the next general election. But if a majority of the votes cast in any county upon the question be "for license," then it shall be lawful for the county court of such county to grant licenses for the purposes aforesaid to persons of good moral character, over the age of twenty-one years, within any township, town or ward of a city in such county, where the majority of the votes cast upon the question was "for license," but in no other (e), subject to such conditions and restrictions of

(d) The right to sell liquor is not a natural right, and the liquor laws are not in conflict with the provisions of the constitution prohibiting monopolies and the granting of privileges to one which may be refused to another. *Lery, ex parte, Ms. op., 1884; Robinson & Warren v. State, 38—641.*

The county court has the absolute and arbitrary discretion to determine whether or not license shall be granted, even where the vote has been favorable to license. *Lery, ex parte, supra; Whittington, ex parte, 34—394.* But where the county court has determined upon the policy of granting license, it has not the arbitrary discretion to discriminate by granting to some and not to others of like qualifications, who may apply and comply with the law as to bond and payment of tax, etc. *Lery, ex parte, supra.*

The county court has no jurisdiction or power to grant license to operate retrospectively, so as to condone offenses committed previous to its issue. *Edwards v. State, 22—253.*

An applicant for license has the right of appeal from the order of the county court to the circuit court, and the latter court should try the matter *de novo*. *Lery, ex parte, supra.*

(e) The county court is not authorized to grant license to sell liquor in any township or city ward in the county, unless at the previous general election there was a majority vote "for license," both in the county and in the ward or township in which it is applied for. Where there was no vote at all on the question in such township or ward, no license can be granted. *Siloam Springs v. Thompson, 41—456.*

the act aforesaid as are not inconsistent with this act. *Ib.*, sec. 9, as amended by act March 19, 1881.

SEC. 4516. Each applicant for a dram-shop or drinking-saloon license shall present his petition to the county court of the proper county, setting forth the place where such dram-shop or drinking-saloon is to be kept, verified by his affidavit, and shall enter into bond to the State of Arkansas, in the penal sum of two thousand dollars, conditioned that such applicant will pay all damages that may be occasioned by reason of liquor sold at his house of business, and shall further pay to any person all such sums of money as may be lost at gaming in his said saloon or dram-shop, or any room or building attached thereto under his control, which bond shall have two good securities thereto, to be approved of by the court. Before such license shall be granted, the applicant shall pay to the collector, and produce his receipt therefor (f), the amount of money and fees specified in section 4510, and such additional sum for the use of the county as shall be determined by the county court—not less than fifty dollars nor more than two hundred dollars, when the license is for twelve months, and not less than fifty dollars in any event (g). *Ib.*, secs. 10 and 11.

SEC. 4517. The county clerk shall keep a record in his office of all licenses issued, and fees and costs paid therefor, together with the bonds filed by the applicants.

SEC. 4518. Any person aggrieved by the keeping of said dram-shop or drinking-saloon, or who may have lost any money or other valuable thing at gaming in said dram-shop, room or house thereto attached, under the control of said drinking-saloon or dram-shop, may have an action on said bond against the principal and securities for the recovery thereof.

SEC. 4519. Any person who shall keep a drinking-saloon or dram-shop, without procuring a dram-shop or drinking-saloon license, as provided by this act, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined as provided in section 4511; and each day or part thereof the same is kept shall be deemed a separate offense (h).

SEC. 4520. This act shall not be held to apply to one who manufactures and sells wines from grapes or berries, or other fruits, and who sells no other liquors, ardent, malt, vinous or fermented (i). *Ib.*, secs. 12–15.

SEC. 4521. Each and all of the provisions of this chapter regulating the sale of ardent, vinous, malt or fermented liquors shall apply with equal force and in the same manner to the sale of alcohol and spirituous liquors (j). Act March 26, 1883, sec. 2.

SEC. 4522. This act is not intended to repeal any special act regulating the sale of ardent, vinous, malt or fermented liquors, or any compound or preparation thereof, in any special locality in this state; but the provisions and penal-

(f) As to the legality of sales made after the money is paid for license, and after the order of court has been made granting it, but before the license has been issued by the clerk, see *State v. White*, 23—275.

(g) The provision embraced in this section which empowers the county court to impose a license tax in addition to the taxes to be paid under SEC. 4510 was possibly repealed by implication by secs. 4 and 6 of the act of March 31, 1883.

(h) See SECS. 1926, 1932. As to necessary allegations in an indictment for keeping a dram-shop or drinking-saloon, see note (c) *ante*, and also the following cases decided under former statutes: *Hensley v. State*, 6—252; *Ramsey v. State*, 11—35.

(i) See *State v. Kate Marsh*, 37—336.

(j) As to selling alcohol before the passage of this act, see *State v. Will*, 39—216; *State v. Martin*, 34—240.

ties of any such special act shall be cumulative to the provisions and penalties of this act; and this act shall apply and be in force in the territory embraced in such special acts, and in all territory from which the sale of such spirits, ardent or intoxicating liquors have been prohibited by the county courts of the state; and a party may be convicted for a violation of either this act or such special act (†). *Ib.*, sec. 3.

SEC. 4523. No debt shall be recoverable for ardent spirits sold at a drinking saloon or dram-shop. *Rev. Stat.*, chap. 148, sec. 11.

THREE-MILE LAW (k).

SEC. 4524. Wherever the adult inhabitants residing within three miles of any school-house, academy, college, university or other institution of learning, or of any church-house in this state, shall desire to prohibit the sale or giving away of any vinous, spirituous or intoxicating liquors of any kind, or alcohol, or any compound or preparation thereof, commonly called tonics or bitters, and a majority of such inhabitants shall petition the county court of the county wherein such institution of learning or church-house is situated, praying that the sale or giving away of the intoxicating liquors and alcohol enumerated in the premises be prohibited within three miles of any such institution of learning or church-house, said county court, upon being satisfied that a majority of such inhabitants have signed such petition, shall make an order in accordance with the prayer thereof, and thereafter, for a period of two years, it shall be unlawful for any person to vend or give away any spirituous, vinous or intoxicating liquors of any kind, or alcohol, or any preparation thereof, commonly called tonics or bitters, within the limits aforesaid (l). *Provided*, that nothing in this act shall be construed as affecting or repealing any special law now in force prohibiting the sale or giving away of spirituous or intoxicating liquors in any particular locality; and, *provided, further*, that nothing herein contained shall prohibit the sale or giving away by manufacturers of wine made from grapes or berries, in quantities of one quart or more or in sealed bottles. *Act March 21, 1881, sec. 1, as amended by act Feb. 20, 1883.*

(†) See *State v. Orton*, 41—306.

(k) The act of March 21, 1881, commonly called the "Three-Mile Law," was held constitutional and valid in the case of *Trammell v. Bradley*, 37—374. The prior act of March 2, 1875, was held constitutional in *Boyd v. Bryant*, 35—69, and *Blackwell v. State*, 36—178.

(l) The proceeding under the three-mile law is a police proceeding, and not in the nature of a suit between parties. The petition gives jurisdiction to the court. The signatures are taken as *prima facie* genuine or properly authorized, and unless the court should, for good reason, permit them to be withdrawn, its only province is to determine, from the best mode fairly practical, whether they constitute a majority of the adult inhabitants within the prescribed limits. A remonstrance or counter petition is not provided for, and is not evidence, but may be admitted as apprising the court that the petition does not contain a majority of the inhabitants; but, even if signed by the same parties as the original, need not prevail over it. *Williams v. Citizens*, 40—290.

No notice of the filing of the petition is required. *Blackwell v. State*, 36—178.

No order can be made upon a petition which designates two points within three miles of which the sale is to be prohibited. *Williams v. Citizens*, *supra*.

The order may be made, though at the last general election a majority of the voters in the township in which the sale is to be prohibited voted for license. *Ib.*

When the order is made the power vested in the county court is exhausted, and it has no power to revoke the order upon a subsequent petition. *Wilson v. State*, 35—414.

Upon appeal to the circuit court the circuit judge should try the matter *de novo*, without a jury, and the final judgment of the circuit court should be ordered to the county court, to be made its own. *Williams v. Citizens*, *supra*.

SEC. 4525. For the purposes of this act females, as well as males, are competent subscribers to the petition herein provided for (m).

SEC. 4526. This act shall not be construed as prohibiting the use of wine for sacramental purposes, or to prevent the prescribing and furnishing of alcoholic stimulants by a regular practicing physician to the sick under his charge when he may deem the same necessary; but before such physician shall be authorized to so prescribe and furnish such alcoholic stimulants, in order to protect himself from the penalty of this act, he shall file in the office of the county clerk of the county in which he resides an affidavit which shall be in the following form, to wit:

"I, _____, do solemnly swear (or affirm) that I am a regular practicing physician, and that I will not prescribe or furnish any vinous or alcoholic stimulants to any one, except it be, in my judgment, a necessity in the treatment of the disease with which he shall be at the time afflicted.

SEC. 4527. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction, either in the circuit court or before any justice of the peace, shall be fined in any sum not less than twenty-five nor more than one hundred dollars (n). *Act March 21, 1881, secs. 2, 3 and 5.*

(m) Both sexes may petition. *Blackwell v. State*, 36—178; *Williams v. Citizens*, 40—290.

(n) See SECS. 1926, 1932, 4511, 4519. A license issued after the order is made is no defense to a prosecution for its violation. *Blackwell v. State*, 36—178; not even where the order has been revoked by the county court. *Wilson v. State*, 35—414.

The offense must be charged and proven to have occurred after the order of the county court forbidding the sale was rendered. *State v. Will*, 39—216. See further as to the indictment. *Blackwell v. State*, 36—178; *Wilson v. State*, 35—414.

An order made under the act of March 2, 1875, displaces the general law prohibiting the selling without license, and an indictment for selling within the prohibited district must be framed under that act, and not under the general law, for selling without license. *State v. Cathey*, 41—308.

Receiving the money and delivering the whisky within the prohibited limits by a part owner of a saloon situated outside of such limits is a violation of the act. *Yowell v. State*, 41—355.

CHAPTER XCIX.

LUNATIC ASYLUM (*).

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ORGANIZATION, ETC.

SECTION 4528. There shall be established at the City of Little Rock an institution for the care and management of lunatics in this state, to be organized and governed as follows, to wit: The governor shall appoint five persons to be trustees of the lunatic asylum, who shall be a body politic and corporate, by the name and style of the "Trustees of the Arkansas State Lunatic Asylum," and shall manage and direct the concerns of the institution, and make all necessary by-laws and regulations not inconsistent with the constitution and laws of the state; and shall have power to receive, hold, dispose of and convey all real and personal property conveyed to them by gift, devise or otherwise, for the use of said institution; and they may sue and be sued; and they shall have power and authority to hold and purchase property for the benefit of such institution, and to purchase or erect suitable buildings for the same. *Act April 19, 1873, sec. 1.*

SEC. 4529. The governor shall immediately after the passage of this act, and on the second Wednesday after the organization of the next general assembly,

(*) See art. XLIX, sec. 19, *Const.*

and on the same day every two years thereafter, appoint, by and with the advice and consent of the senate, five persons to be trustees of said asylum, who shall each hold their office for the term of two years, or until their successors are qualified. *Act March 21, 1883.*

SEC. 4530. Should any vacancy occur by the death or resignation of any trustee, or otherwise, such vacancy shall be filled by the governor for the unexpired term of such trustee.

SEC. 4531. The trustees shall have charge of the general interests of the institution. They shall appoint a superintendent, who shall be a skillful physician, and who shall hold his office for the term of four years; but they shall have the power to remove said superintending physician at any time for infidelity to the trust reposed in him, or for incompetency or willful neglect of duty. Said physician shall, at the time of his appointment, be a married man, and reside with his family in said asylum.

SEC. 4532. They shall appoint a treasurer, who shall give bond for the faithful performance of his duties, in such sum and with such securities as the board of trustees may prescribe, which bond shall be made payable to the state and filed in the office of the auditor of state; and the board of trustees may require, from time to time, when they may deem the same necessary, the renewal of said bond; they shall also have the power to determine his compensation for services; also, the salary of the other officers and assistants who may be necessary for the just and economical administration of the affairs of said institution. They shall appoint a steward, who shall give a bond for the faithful discharge of his duty, upon the same terms as are hereinbefore required of the treasurer.

SEC. 4533. The board of trustees shall keep in a bound book, to be provided for that purpose, a fair and full record of all their doings, which shall be open at all times for the inspection of the governor of the state and all persons whom he or either house of the legislature may appoint to examine the same.

SEC. 4534. The trustees shall maintain an effectual inspection of the asylum, for which purpose one or more of them shall visit it at least once in every week.

SEC. 4535. They shall hold a meeting of said board, at the asylum, once in every three months, or oftener if it shall be required.

SEC. 4536. Special meetings shall be called in the manner prescribed in the by-laws.

SEC. 4537. The board of trustees shall, on or before the first day of every January, make a true report of the actual condition of said asylum to the governor, accompanied by the annual report of the superintendent and the treasurer. Upon the meetings of the legislature the governor shall transmit said reports to it. *Act April 19, 1873, secs. 1-3.*

SEC. 4538. Upon the removal of any trustee beyond the limits of this state, or upon his failure to visit said institution, as required by the by-laws of said board, the office of such trustee shall become vacant, and the governor shall appoint a trustee in his stead, upon the fact being duly certified to him by the board of trustees. *Act April 19, 1873, sec. 4, as amended by act March 15, 1881.*

SEC. 4539. A majority of said board of trustees shall constitute a quorum to do any business connected with said asylum, except the repeal of any of the

by-laws, or the removal of the superintendent, for which purpose it shall require at least four of the said board to act.

SEC. 4540. Such board shall have the power to prescribe any additional duty of the treasurer which may be deemed necessary.

SEC. 4541. The treasurer shall be secretary of the board of trustees.

SEC. 4542. The superintending physician shall have the power to appoint and remove all subordinate officers and persons allowed by the board of trustees. He shall, at the time of the reception of each patient, enter in a book kept for that purpose the name, age, sex, residence, office and occupation of the person, by whom and by whose authority each insane person is brought to the asylum, and have all the orders, warrants, requests, certificates, and other papers accompanying such insane person, carefully filed and forthwith copied in said book; he shall also have general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons therein, subject to the by-laws and regulations of the trustees; he shall daily ascertain the condition of the patients, and prescribe their treatment, in the manner prescribed in the said by-laws; and he shall also be required to see that all the rules and regulations for the discipline and good government of the institution are properly obeyed and enforced; he shall cause full and fair accounts, and records of all his doings, and of the entire business and operations of the institution, to be kept regularly, from day to day, in books provided for that purpose, in the manner and to the extent prescribed in the by-laws, and shall see that all such accounts and records are fully made up to the last day of December in each year, and that the principal facts and results, with his report thereon, be represented to the trustees immediately thereafter.

SEC. 4543. The treasurer shall receive, collect, sue for and pay out all moneys belonging to the institution, settle his accounts with the board at least once in every three months, or oftener if they shall require it, and in the month of December of every year with the auditor; and he shall keep his books and vouchers as shall be prescribed by the board of trustees in their by-laws.

SEC. 4544. The steward shall keep a regular account of all daily disbursements for the institution, take vouchers for all payments, and keep carefully and file away all original bills for supplies purchased by him for said asylum, settle his accounts with the superintendent and treasurer once in every month, with the board once in every three months, and with the auditor in every December. He shall keep his accounts always open for the inspection of the superintendent, or any trustee, or the treasurer. The steward shall be accountable for the careful keeping and economical use of all furniture, stores or other articles provided for the asylum; he shall, annually, during the month of December, make and file with the trustees a true and perfect inventory, verified by oath, of all personal property of every description belonging to the asylum, with the estimated value of different classes of articles, and do and perform such other duties as shall be required of him by the by-laws ordained by the board of trustees.

SEC. 4545. The resident officers of the asylum and attendants and assistants employed therein, during the term of such employment, shall be exempt from serving on juries, and the certificate of the superintendent shall be evidence of such employment.

SEC. 4546. Immediately after the appointment by the court of any guardian for a lunatic or insane person, such guardian shall take steps to have the person thus placed in his charge admitted into said asylum. *Act April 19, 1873, secs. 4, 6-10.*

PROCEEDINGS FOR ADMISSION TO ASYLUM.

SEC. 4547. Any citizen of the State of Arkansas, or resident of said state, who may be, or hereafter become, insane, may be admitted to the State Lunatic Asylum as a patient, proper proof having been made and proceedings had according to the provisions of this act.

SEC. 4548. Whenever it shall appear that any person entitled to admission to the State Lunatic Asylum is insane, any reputable citizen of the state may file a written statement with the county and probate judge of the county in which such supposed insane person may reside, which statement shall be substantially as follows:

I, _____, hereby certify that _____, a citizen or resident of _____ county, State of Arkansas, is, to the best of my belief, insane, and that he (or she) ought to be committed to a State Lunatic Asylum for care and treatment, as his (or her) being at large is dangerous to the community, or prejudicial to his (or her) chances of recovery from his (or her) condition of mental disorder.

[Signed,]

Sworn to and subscribed before me this _____ day of _____, 188—.

[Signed,]

_____,
County and Probate Judge.

SEC. 4549. Any county and probate judge with whom a citizen's statement may have been filed, as set forth in section 4548, shall appoint a time as soon thereafter as may be practicable for hearing, and at such time appointed shall proceed to hear the testimony of such competent witnesses as may be produced at such hearing, and, in addition to the testimony of such witnesses, shall cause such alleged insane person to be examined by one or more regular practicing physicians, of good standing, who shall present in writing to such county and probate judge a sworn statement of the result of his or their examination, including the following interrogatories, with their answers, as part of the same:

1. Where does _____ reside at the present time? [Answer.]
2. How long has he (or she) been a resident of the State of Arkansas?
[Answer.]
3. Where was he (or she) born? [Answer.]
4. What is his (or her) age? [Answer.]
5. Of what race or nationality were his (or her) immediate ancestors?
[Answer.]
6. What is his (or her) civil condition? [Answer—married, single or widowed.]
7. (If a woman), how many children have been born to her? [Answer.]
8. At what time was the last child born to her? [Answer.]
9. What is, or has been, his (or her) principal occupation? [Answer.]
10. How long has he (or she) manifested symptoms of mental derangement? [Answer.]

11. What were the first symptoms, acts or words which caused a suspicion of mental derangement in his (or her) case? [Answer.]

12. What are the more prominent manifestations which characterize the present condition of his (or her) mind? [Answer.]

13. Has he (or she) manifested any disposition to do violence to self or others, or to destroy clothing, furniture or property of any kind? [Answer—state facts.]

14. Is he (or she) a person of more or less than ordinary education? [Answer.]

15. Is he (or she) a professor of Christianity, or has he (or she) ever been such? [Answer.]

16. Was he (or she) regarded by his (or her) neighbors and acquaintances, when in his (or her) normal condition, as more or less than ordinarily intelligent? [Answer.]

17. Has he (or she) ever suffered great bodily pain, sickness, injury or violence? [Answer—particulars.]

18. Has he (or she) ever been subject to fits of any kind? [Answer.]

19. Has he (or she) ever indulged habitually or occasionally in the use of intoxicating liquors to excess? [Answer.]

20. Has he (or she) habitually an appetite for tobacco, opium, morphine, laudanum or any other drug? [Answer—state facts fully.]

21. Has he (or she) experienced any great shock or strain of mind recently? [Answer.]

22. Were his (or her) parents or grandparents, or any of them, ever intemperate, insane or subject to fits? [Answer—give all facts as far as known.]

23. Is there now, or has there been, any one of his (or her) immediate relatives insane, intemperate, epileptic or hysterical to a marked degree? [Answer—state all facts.]

24. Has he (or she) been treated medically with a view to remedying his (or her) mental derangement? [Answer, by what physician and in what manner, if practicable.]

25. Is he (or she) free from any loathsome or infectious disease? [Answer.]

26. Has he (or she) more than sufficient estate for the support of his (or her) natural dependents? [Answer.]

SEC. 4550. If it shall appear to the said county and probate judge, upon his hearing of all the testimony in the case, and from the statement of the physician or physicians, as indicated in the preceding section, that the original statement filed with him by the said citizen is true, he shall so decide, and shall, without delay, transmit to the superintendent of the State Lunatic Asylum his decision in writing, with copies of the original statement filed with him by said citizen, and of the statement of said physician or physicians, including the interrogatories and answers as heretofore specified.

SEC. 4551. The superintendent of the State Lunatic Asylum, on the receipt of the decision of the said county and probate judge, with the copies of the original statement by the said citizen, and statement of said physician or physicians, as heretofore prescribed, shall immediately notify the said county and probate judge of his readiness to admit the said insane person into said asylum,

if there be room unoccupied; but if there be not room unoccupied, he shall notify the said county and probate judge of the fact, and shall return to him the copy of his decision, with the accompanying papers, indorsed accordingly; and he shall enter upon an appropriate page of the register of said asylum the name of the said insane person, and the name of his (or her) county, in the order in which the decision of the said county and probate judge was received, and he (or she) shall be entitled to precedence of all who may come thereafter.

SEC. 4552. On receipt of notice from the superintendent of the State Lunatic Asylum of his readiness to admit said insane person into said asylum, the county and probate judge to whom such notice is directed shall immediately issue a warrant or order, with the seal of his office attached, commanding the sheriff of his county, or suitable deputy, to take the said insane person into custody and deliver him (or her), without delay, to the superintendent of said asylum at Little Rock.

SEC. 4553. The sheriff of any county, or any person deputized by the county and probate judge, to whom a warrant or order, properly issued, may come, commanding the arrest and delivery to the superintendent of the State Lunatic Asylum of any insane person, shall proceed, without delay, to execute such warrant or order, and may call to his assistance such physician, nurse or other person as the said county and probate judge may indicate as necessary for the safe and judicious transfer of the person to be so arrested and delivered, and shall deliver the said insane person as directed, without unnecessary force, restraint or publicity, by the most direct and practicable route and method of travel.

SEC. 4554. Whenever any sheriff, or any person deputized for the purpose, shall deliver any person, duly admitted and accepted, to the superintendent of the State Lunatic Asylum, the superintendent shall indorse the warrant upon which such person was delivered as follows:

"Received the person within named, this _____ day of _____, 188—, attended by _____, sheriff (or deputy), and _____, assistant.

"[Signed,] _____, Superintendent."

SEC. 4555. Any citizen or resident of the State of Arkansas, duly found to be insane, according to the proceedings specified in this act, may be admitted into the State Lunatic Asylum, if there be unoccupied room; and if it appear upon examination, as specified in section 4549, that said insane person has not more than sufficient estate for the support of his (or her) natural dependents, he (or she) may be maintained, treated and otherwise cared for in said asylum at the public expense till removed, as hereinafter provided.

SEC. 4556. Any citizen or resident of the State of Arkansas, duly found to be insane, according to the proceedings specified in this act, may be admitted into the State Lunatic Asylum, if there be unoccupied room, upon conditions to wit: If he (or she) has been found, upon examination, as specified in section 4549, to possess estate, over and above all indebtedness, more than sufficient for the support of all his (or her) natural dependents, his (or her) natural or legally constituted guardian shall pay to the treasurer of said asylum, in advance, an amount equal to six months' board, at a rate not exceeding four dollars per week, except as hereinafter provided; shall obligate himself, or herself, in a sufficient bond, to pay all damages which said insane person may do

to the building or furniture of said asylum, not exceeding twenty dollars; shall supply him (or her) with sufficient and suitable clothing, as may be required by the superintendent, and shall remove him (or her) when so required and notified by the president of the board of trustees and superintendent of said asylum. The natural or legally constituted guardian of said insane person may contract with the superintendent for special attentions to him (or her), at an additional rate not exceeding the amount of fifteen dollars per week, as may be agreed. In case of the death or removal of said insane person before the expiration of the time for which any payment may have been made, the treasurer of said asylum shall refund to the natural or legally constituted guardian of said insane person an amount proportional to the unexpired time for which such payment had been made; *provided*, that indigent persons who are not able to pay, or who have no estate out of which to pay such expenses, shall have preference over those who have such estate.

SEC. 4557. No person acquitted of crime on the ground of insanity, nor other person, shall be admitted into the State Lunatic Asylum, unless he (or she) shall have been duly found to be insane according to the provisions of this act.

SEC. 4558. No person having become insane during any term of service or confinement in any penal institution, on account of crime whereof he (or she) may have been duly convicted, shall be admitted into the State Lunatic Asylum during such term of service or confinement, but shall be treated for that disease inside of the wall of the penitentiary.

SEC. 4559. All persons found to be insane, for whom application for admission to the State Lunatic Asylum shall be made in compliance with the provisions of this act, shall be classified as "acute," "chronic" or "probably incurable," such classification to be determined by the duration of the disease and such complications as are known to render recovery doubtful, if not impossible. All cases of less than one year's duration, from first recognized symptoms of insanity, shall be classified as "acute;" all cases over one year's duration shall be classified as "chronic;" and all cases complicated with epilepsy, original imbecility or feeble-mindedness, deformities of skull from injuries, old age or general paralysis, shall be classified as "probably incurable;" and a reasonable discrimination shall be made by the authorities in charge of the asylum in the admission of insane persons in favor of, first, "the acute," second, "the chronic," and third, "the probably incurable," provided that no person of either classification shall be refused admission as long as there is unoccupied room for patients in the asylum. But no idiot, nor congenital imbecile, nor epileptic person, not otherwise insane, shall be admitted or retained in said asylum after the fact of such condition becomes apparent to the superintendent, under any circumstances.

SEC. 4560. Whenever application is made for the admission of an insane person, according to law, and there is, at the time, no unoccupied or available room in the asylum, if it shall appear, from the history of the case presented, that it is "acute" and uncomplicated, the superintendent shall, as soon as practicable, make room for the admission of such patient, by discharging some one inmate belonging to the "probably incurable" class, if such there be in the asylum, or one belonging to the "chronic" class, if there be no one dischargeable from the third class; but in making such selection for discharge, the

superintendent shall discriminate, and discharge such an one as may have been longest in the asylum, if not violent or dangerous to the community, or such an one as may be the least dangerous to the community, or whose discharge will effect the least public inconvenience or cost; and no appeal shall be had from the decision of the superintendent of the asylum in matters of admission and discharge of inmates, except to the board of trustees of the asylum, who may direct the superintendent to admit or discharge any person under any circumstances not involving a violation of the law.

SEC. 4561. When, by reason of recovery, or necessity for the benefit of an insane person of the "acute" class, the superintendent of the State Lunatic Asylum thinks proper to discharge any inmate of the asylum, he shall send an official notice to the county and probate judge of the county from which such inmate was committed, by mail, which shall be substantially as follows:

STATE LUNATIC ASYLUM, LITTLE ROCK, ARKANSAS, ———, 188—.

To the county and probate judge of ——— county: You are hereby notified that ———, an inmate of this asylum, who was admitted from ——— county on the ——— day of ———, 18—, is this day registered for discharge (because of recovery, or to make room, or whatever circumstances govern the case), and you are requested to cause his (or her) immediate removal. The sheriff will (or not) need the assistance of ——— persons for his (or her) safe return to your county.

[L. s.]

[Signed,]

———, Superintendent.

SEC. 4562. The county and probate judge of any county in the State of Arkansas, who may receive official notice from the superintendent of the State Lunatic Asylum that an inmate from the county of which he is county and probate judge has been registered for discharge, and a request to cause the removal of such inmate, shall forthwith issue a warrant or order to the sheriff, or a suitable person whom he may deputize to perform the service, commanding him to remove such inmate without delay, and authorizing him to employ such assistance as the superintendent's notice may indicate, if any. The said county and probate judge shall, at the same time, notify the guardian, family or immediate relatives of the person so discharged from the asylum (if he or she have any) of such discharge, and the sheriff, or person deputized, as hereinbefore indicated, shall deliver the person so discharged to his (or her) guardian or home, if he (or she) have such guardian or home still in the county, or to such party and place in the county as may be provided for the further custody and maintenance of the person so discharged, if he (or she) be not recovered and capable of taking care of himself (or herself); and shall make due return of his warrant when executed. *Provided*, that nothing herein specified shall prevent an inmate of the Lunatic Asylum, who may have recovered his or her reason, from being unofficially removed from the asylum by consent of the superintendent, or any person being removed by their friends with the consent of the superintendent, or by direction of the board of trustees of said asylum. But notice of such removal shall be sent at once to the county and probate judge of the county from which such person so removed was committed.

SEC. 4563. Any sheriff or deputized person, who may be commissioned to transfer and deliver a person declared insane to the State Lunatic Asylum, from any county in the state, shall, before delivering such person to the

superintendent of said asylum, see that the person so to be delivered is provided with sufficient and suitable clothing, which shall consist of not less than two shirts, two pairs drawers, two pairs socks, one pair shoes, one pair pants, one vest and one coat, for men; two chemises, two skirts, two waists, two pairs drawers, two pairs stockings, two dresses, one shawl and one bonnet, for women, which shall be clean and in good order, as good as new; or, if more convenient, the sheriff may deposit with the superintendent sufficient funds to enable the asylum to furnish any deficiency found to exist in the supply of clothing brought with the person, because of quantity or quality of same, the amount of which deposit the superintendent shall indorse upon the sheriff's warrant as received.

SEC. 4564. Each county in the state shall be chargeable for all expenses of commitment, delivery to and removal from the State Lunatic Asylum of persons resident of the respective counties, and shall reimburse the sheriff for money deposited with the superintendent for deficiencies of clothing of patients in accordance with law.

SEC. 4565. If any person shall, in anywise, attempt to introduce any person into this institution contrary to the provisions of this act, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty nor more than three hundred dollars.

SEC. 4566. For the purpose of more fully carrying out the provisions of this act, it shall be the duty of the superintendent of the asylum, as soon as the building is ready to receive patients, to apportion to each county the number of patients it will be entitled to, taking as the terms of the proportion: the number of inhabitants in the state, the number in the county, and the number of patients the institution will accommodate, the last census taken by the United States to be the basis as to number of inhabitants. He shall immediately notify the county judge of each county of the number of patients the county is entitled to, and in all cases each county shall be entitled to the number apportioned to it, to the exclusion of any other patients. *Act Feb. 17, 1883.*

SEC. 4567. The county officers sending a patient to the asylum shall, before sending him, see that he is free from any contagious disease, in a state of perfect bodily cleanliness and comfortably clothed. *Act March 15, 1881.*

CHAPTER C.

MANDAMUS AND PROHIBITION.

SECTION	WHAT COURTS MAY ISSUE.	SECTION	PETITION FOR, ANSWER, TRIAL.
4568.	Circuit courts may issue to justices of the peace and other inferior officers.	4571.	Writs of <i>mandamus</i> , how obtained and prosecuted.
	MANDAMUS AND PROHIBITION DEFINED.	4572.	Answer to.
4569.	Writ of <i>mandamus</i> defined.	4573.	Trial.
4570.	Writ of prohibition defined.	4574.	Orders <i>pendente lite</i> .
			APPEALS.
		4575.	State may appeal without security.

WHAT COURTS MAY ISSUE.

SECTION 4568. The circuit courts shall have power to issue writs of *mandamus* to the courts of probate, county courts, justices of the peace, and all other inferior officers in their respective circuits (a). *Rev. Stat., chap. 92, sec. 9.*

MANDAMUS AND PROHIBITION DEFINED.

SEC. 4569. The writ of *mandamus*, as treated of in this chapter, is an order of a court of competent and original jurisdiction commanding an executive or ministerial officer to perform an act, or omit to do an act, the performance or omission of which is enjoined by law, and is granted on the motion of the party aggrieved, or of the state, when the public interest is affected (aa).

SEC. 4570. The writ of prohibition is an order from a circuit court to an inferior court of limited jurisdiction, prohibiting it from proceeding in a matter out of its jurisdiction (b).

(a) When a justice of the peace refuses to issue a *supersedeas*, upon the filing of a schedule of exempt property, the proper remedy is by *mandamus*. *Smith v. Raysdale*, 36—297.

(aa) The writ of *mandamus* is a writ to compel the performance of an act or duty, and not to prevent it; and our code does not intend that it shall take the place of an injunction. *Crawford v. Carson*, 35—565. The supreme court has power to issue writs of *mandamus* to the circuit court to compel it to act, but not to control its discretion, where it has any. It may enforce the performance of ministerial acts by the circuit court. *McCreary v. Rogers*, 35—298. The right to an appeal from the judgments of the circuit court is absolute, and will be enforced by *mandamus*. *Ib.* The officer whose conduct is complained of should alone be made the party defendant in a petition for *mandamus*. *Fry v. Reynolds*, 33—450. In a proper case a judge may be compelled by *mandamus* to sign a bill of exceptions. *Garibaldi v. Carroll*, 33—568. *Mandamus* is the proper remedy to compel the receipt of county warrants for taxes. *Fry v. Reynolds*, 33—450. The supreme court will, by *mandamus*, compel the circuit court to permit a defendant in a criminal case to take the depositions of witnesses residing out of the state. *Giboney v. Rogers*, 32—462. *Mandamus* will not lie to compel the commissioner of state lands to issue a second patent where the state has wrongfully issued a patent to another. The remedy of the applicant is in equity against the first patentee. *Smith v. Moseley*, 32—425.

(b) A writ of prohibition will not issue until after opportunity given to parties to show cause against it. *Tucker, ex parte*, 25—567. When a court is proceeding in a matter not within its jurisdiction, prohibition is the proper remedy. *Hanger & Co. v. Keating*, 26—51. But this remedy can not be invoked until the want of jurisdiction has been pleaded, and the plea overruled, in the court where the proceeding is pending. *City of Little Rock, ex parte, Ib.*, 52. The writ of prohibition will never be granted unless the inferior court has clearly exceeded its authority, and the applicant has no other remedy. *Russell v. Jacobway*, 33—191. If the circuit court attempts to control the discretion of the county court in determining the result of an election for the removal of a county seat, a writ of prohibition will lie from the supreme court. *Ib.* The mere filing of the petition for prohibition and notice to the judge will not restrain him from proceeding. *Henry v. Steele*, 28—455.

PETITION FOR, ANSWER, TRIAL.

SEC. 4571. Writs of *mandamus*, except where used by a court for enforcing its judgments or orders, and writs of prohibition shall be obtained by motion, and prosecuted in the manner provided in sections 3957 to 3962, both inclusive, in chapter 89, entitled "judgments summary," except that the applicant shall file a petition (c) wherein he shall state the cause and ground for his application before giving notice of his motion.

SEC. 4572. The party against whom the *mandamus* or prohibition is sought shall file an answer, wherein he shall state the reason why the writ should not be granted, which answer shall be filed at or before the time fixed for making the motion.

SEC. 4573. The court shall hear and decide all questions of law or fact arising in the motion, and the granting or refusing of the writ shall be the final order in the motion (d).

SEC. 4574. During the pendency of the motion, the court or judge in vacation may make temporary orders for preventing damages or injury to the applicant until the motion is decided. *Civil Code, secs. 516-519 and 521.*

APPEALS.

SEC. 4575. Where the interests, rights or claims of the state are affected by the final order on an application for a writ of *mandamus*, the attorney-general may prosecute an appeal without any security whatever. *Ib., sec. 520.*

(c) A *jurat* is necessary to a petition for *mandamus*. *Black v. Auditor*, 26-237.

(d) The *hearing* upon *mandamus* must be by the court, and not by the judge at chambers. *Palmer v. McClesney*, 26-452. *Mandamus will lie* when a person has a clear legal right to insist that an act shall be done by a public officer, and no other adequate remedy. *Golings v. Mills*, 1-11; *Estell v. Hinger & Winston*, *Ib.*, 121; *Howard v. McDiarmid*, 26-100; *Black v. Auditor*, *Ib.*, 237; *Fitch v. McDiarmid*, *Ib.*, 482; *Underwood v. White*, 27-382.

It will not lie to control the judicial discretion or judgment of an inferior court or tribunal, but only to compel them to an exercise of their discretion or judgment. *Gunn v. County of Pulaski*, 3-427; *Hutt, ex parte*, 14-368; *Johnson, ex parte*, 25-614; *Hayes, ex parte*, 26-510; *McMillen v. Smith*, 26-613; *Union County v. Robinson*, 27-116.

All questions of law and fact should be submitted together, and decided at the same time. *Moses v. Kearney*, 31-261. Where the writ is sought for the enforcement of a *public* right, it is not necessary that the relator should have any special interest; but the proceeding must be in the name of the state. *Ib.* The petition should show a *refusal* on the part of the officer to perform the act. *Coit v. Elliot*, 28-294.

CHAPTER CI.

MARKS AND BRANDS.

SECTION

4576. Ear-mark and brand to be recorded.
4577. Cattle, etc., when to be marked or branded.
4578. Disputes concerning, how decided.
4579. Duty of clerks to keep such record.

SECTION

4580. Marking or branding cattle, etc., by purchaser;
how to be done.
4581. Minors may have mark or brand.

SECTION 4576. Every person who has cattle, hogs, sheep or goats shall have an ear-mark and brand, and but one of each, and differing from the ear-mark and brand of his neighbors, which ear-mark and brand shall be recorded by the clerk of the county court where such cattle, hogs, sheep or goats shall be.

SEC. 4577. Cattle shall be marked with the ear-mark or branded with the brand of the owner on or before twelve months old; hogs, sheep and goats shall be marked with the ear-mark of the owner on or before they are six months old.

SEC. 4578. If any dispute shall arise about any ear-mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk.

SEC. 4579. It shall be the duty of the clerk of the county court to keep a well-bound book, in which he shall record the marks and brands of each individual who may apply to him for that purpose, and which shall be subject to the examination of every citizen of the county at all reasonable office hours, free of charge for such examination.

SEC. 4580. A person purchasing or acquiring cattle or other stock, where he brands or marks the same in his brand or mark after the acquisition of the same, shall do it in the presence of one or more of his neighbors, who are authorized to certify to the fact of branding or marking being done, where done, and in what brand or mark the cattle or other stock were previously, and in what brand or mark they were re-branded or re-marked.

SEC. 4581. Minors owning cattle or hogs separate from those of the father or guardian may have a brand and mark, which shall be recorded; the father or guardian shall be responsible for the proper use of such mark and brand of any such minor. *Rev. Stat., chap. 93.*

CHAPTER CII.

MARRIAGE CONTRACTS (*).

SECTION

4582. Must be in writing.
 4583. How acknowledged.
 4584. When for real estate, to be recorded.
 4585. Depositing for record to be deemed notice.
 4586. Not to be valid or affect property, except as between the parties, until when.

SECTION

4587. To be received in evidence, when.
 4588. When lost, a copy may be received in evidence.
 4589. Certificate of acknowledgment or probate, record or transcript not to be conclusive.

SECTION 4582. All marriage contracts whereby any estate, real or personal, is intended to be secured or conveyed to any person, or whereby such estate may be affected in law or equity, shall be in writing and acknowledged by each of the contracting parties, or proved by one or more subscribing witnesses (a).

SEC. 4583. Marriage contracts shall be acknowledged or proven before a court of record, or before some judge or clerk of a court of record of the state in which the contract is made and executed, which acknowledgment or proof shall be taken and certified in the same manner as deeds of conveyance for lands are, or shall be, required by law to be acknowledged or proven.

SEC. 4584. Every marriage contract whereby any real estate is conveyed or secured shall be recorded with the certificate of proof or acknowledgment in the office of the clerk and recorder of every county in which any such estate thereby intended to be affected or conveyed shall be situate.

SEC. 4585. When a marriage contract is deposited with the recorder of any county for record, it shall be deemed full notice to all persons of the contents thereof, as far as relates to real estate affected thereby in the county where it is deposited.

SEC. 4586. No marriage contract shall be valid or affect property except between the parties thereto, and such as have actual notice thereof, until it shall be deposited for record with the clerk and recorder of the county where the real estate is situate.

SEC. 4587. Marriage contracts duly proved or acknowledged, certified or recorded, shall be received as evidence in any court of record of this state without further proof of their execution.

SEC. 4588. When it shall appear to a court that any marriage contract, duly acknowledged or proved and recorded, is lost, or is not in the power of the party wishing to use it, a copy thereof, duly certified, under the hand and seal of the clerk and recorder, may be received in evidence.

SEC. 4589. Neither the certificate of acknowledgment nor probate of any such marriage contract, nor the record or transcript thereof, shall be conclusive, but may be rebutted. *Rev. Stat., chap. 95.*

(*) See *Harrison v. Trader*, 27—288.

(a) See *Gulbreath v. Cook*, 30—417.

CHAPTER CIII.

MARRIAGES.

SECTION

- 4590. Marriage a civil contract.
- 4591. At what ages can be contracted.
- 4592. Within what degrees void.
- 4593. Of white persons with negroes and mulattoes to be void.
- 4594. When can be annulled, and how.
- 4595. When subsequent marriage can be contracted.
- 4596. Marriages contracted out of this state, when to be valid.
- 4597. When death presumed from abandonment.
- 4598. Illegal contracting or celebrating, how punished.
- 4599. Who may solemnize.
- 4600. Minister or priest, how authorized to do so.
- 4601. Penalty for violating preceding section.
- 4602. Certain marriages declared legal.
- 4603. Ceremony, how performed.
- 4604. How, in religious societies, which object to formal ceremonies.
- 4605. Certificate of, in such case, who to make.

SECTION

- 4606. Credentials of minister, etc.; record of, to be kept by clerk.
- 4607. Penalty for failure to keep.
- 4608. Record book of marriages to be evidence.
- 4609. Persons of color; marriages of, declared legal.
- 4610. Marriage license required.
- 4611. Clerk of county court to issue.
- 4612. Form of license.
- 4613. Bond required of applicant.
- 4614. License for marriage of minors; consent of parents necessary to obtain.
- 4615. License, when to be returned to clerk's office.
- 4616. Applying for license when consent of second party has not been obtained; penalty for.
- 4617. Issuing license contrary to law; penalty for.
- 4618. Solemnizing marriage contrary to law; penalty for.
- 4619. Duty of clerk on return of license duly executed.
- 4620. Penalty for false return or false record.

SECTION 4590. Marriage is considered in law a civil contract, to which the consent of the parties capable in law of contracting is necessary (a).

SEC. 4591. Every male who shall have arrived at the full age of seventeen years, and every female who shall have arrived at the full age of fourteen years, shall be capable in law of contracting marriage; if under those ages, their marriages are void (b). *Rev. Stat., chap. 94, secs. 1 and 2.*

SEC. 4592. All marriages between parents and children, including grandparents and grandchildren of every degree; between brothers and sisters of the half as well as the whole blood; between uncles and nieces, and between aunts and nephews, and between first cousins, are declared to be incestuous and absolutely void. This section shall extend to illegitimate children and relations. *Ib., sec. 3, as amended by act March 5, 1875.*

SEC. 4593. All marriages of white persons with negroes or mulattoes are declared to be illegal and void. *Rev. Stat., chap. 94, sec. 4.*

SEC. 4594. When either of the parties to a marriage shall be incapable, from want of age or understanding, of consenting to any marriage, or shall be incapable from physical causes of entering into the marriage state, or where the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent jurisdiction.

SEC. 4595. No subsequent or second marriage shall be contracted by any

(a) If a man seduces a woman, and marries her through fear of the consequences of his crime, the marriage will, nevertheless, be valid. *Honnett v. Honnett*, 33—156.

(b) The issue of a marriage null in law shall be deemed and considered legitimate. SEC. 2526. Though the marriage of a female under the age of fourteen years is void by the laws of this state, yet, if a female of twelve is married in another state where the common law prevails, the marriage will be deemed valid here. *Barnett v. State*, 35—301.

person during the lifetime of any former husband or wife of such person, unless the marriage of the former husband or wife has been dissolved for some one of the causes set forth in the law concerning divorce, by a court of competent authority.

SEC. 4596. All marriages contracted without this state which would be valid by the laws of the state or country in which the same are consummated, and the parties then actually resided, shall be valid in all the courts in this state.

SEC. 4597. In all cases where any husband shall abandon his wife, or wife her husband, and reside beyond the limits of this state for the term of five successive years, without being known to such person to be living during that time, their death shall be presumed, and any subsequent marriage entered into after the end of said five years shall be as valid as if such husband or wife were dead.

SEC. 4598. Whoever shall contract marriage in fact, contrary to the prohibitions of section 4592, and whoever shall knowingly solemnize the same, shall be deemed guilty of a misdemeanor. *Ib.*, *secs.* 5-9.

SEC. 4599. For the purpose of being registered and perpetuating the evidence thereof, marriage shall be solemnized only by the following persons:

First. By the governor of the state for the time being.

Second. By any of the judges of the courts of record within this state.

Third. By any justice of the peace of the county where the marriage is solemnized.

Fourth. By any regularly ordained minister or priest of any religious sect or denomination.

SEC. 4600. No minister of the gospel or priest of any religious sect or denomination shall be authorized to solemnize the rights of matrimony in this state until such minister or priest shall have caused to be recorded in the office of the clerk and recorder of some county in this state his license or credentials of his clerical character, and have obtained from such clerk a certificate, under his hand and seal, that the same is duly recorded in his office; and it shall be the duty of such minister of the gospel or priest to add to the certificate of marriage now required by law a statement setting forth the county where and the time when his license or credentials were so recorded.

SEC. 4601. Any minister of the gospel, priest of any religious sect or denomination, or any person purporting himself to be such, who shall solemnize the rites of matrimony contrary to the provisions of this act, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be fined in any sum not less than one hundred dollars. *Act Jan. 21, 1873.*

SEC. 4602. All marriages heretofore solemnized in this state, by any minister of the gospel or clergyman, duly accredited and acting as such, are hereby declared legal and binding, and all children born of parents so married are hereby declared legitimate. *Act March 23, 1881.*

SEC. 4603. When marriages are solemnized by a minister of the gospel or priest, the ceremony shall be according to the forms and customs of the church or society to which he belongs; when solemnized by a civil officer, such form shall be observed as the officer shall deem most appropriate.

SEC. 4604. It shall be lawful for religious societies who reject formal ceremonies to join together in marriage such persons as are of such society, according to the forms, customs or rites of the society to which they belong.

SEC. 4605. The clerk or keeper of the minutes, proceedings or other book of the society where such marriage shall be had, or, if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make the certificate of such marriage. *Rev. Stat., chap. 94, secs. 12-14.*

SEC. 4606. It shall be the duty of the clerk and recorder in each county seasonably to record, in a well-bound book to be by him kept for that purpose, all licenses or credentials of clerical character of such persons as may deposit the same with him for record.

SEC. 4607. Any clerk failing to comply with the provisions of the preceding section shall, on motion of the party aggrieved (giving the said clerk ten days' notice in writing of such motion), be fined in any sum not exceeding one hundred dollars.

SEC. 4608. The book of marriages and clerical credentials to be kept by the respective clerks and recorders, and copies thereof duly certified by the clerk and recorder, shall be evidence in all the courts in this state. *Ib., secs. 22, 23 and 24.*

SEC. 4609. The marriages of all persons of color, who now live together as husband and wife, are hereby declared to be legal and their children legitimate. *Act Dec. 20, 1866 (c).*

SEC. 4610. All persons hereafter contracting marriage in this state are required to first obtain a license from the clerk of the county court of some county in this state.

SEC. 4611. The clerks of the county courts of the several counties in this state are hereby required to furnish said license, upon application being made, and the clerk being fully assured that applicants are lawfully entitled to the same, and upon the receipt of his fee, which shall be one dollar for all services required of him under the provisions of this act.

SEC. 4612. The license may be in the following form, to wit:

STATE OF ARKANSAS, }
COUNTY OF ———. }

To any person authorized by law to solemnize marriage:

You are hereby commanded to solemnize the rites and publish the bans of matrimony between A. B., age ——— years, and D. C., age ——— years, according to law; and do you officially sign and return this license to the parties herein named.

Witness my hand and official seal, this ——— day of ———, A. D. 18—.

[L. S.]

A. B., County Clerk.

The party solemnizing the rites of matrimony shall indorse on such license his certificate of that fact in the following form, to wit:

STATE OF ARKANSAS, } ss.
COUNTY OF ———. }

I, A. B., do hereby certify that on the ——— day of ———, A. D., 18—, I did duly and according to law, as commanded in the foregoing license, solemnize the rites and publish the bans of matrimony between the parties therein named.

Witness my hand, this ——— day of ———, A. D. 18—.

A. B., Justice of the Peace.

(Or insert whatever title the party has, as minister, etc.)

(c) This section is constitutional. *Scoggins v. State*, 32—205.

SEC. 4613. Any person applying for a license under the provisions of this act shall be required to enter into bond to the State of Arkansas in the penal sum of one hundred dollars, for the use of and benefit of the common school fund of such county, conditioned that the parties applying therefor have a lawful right to the same, and that they will faithfully carry into effect and comply with the provisions thereof. Said bond shall be signed by at least one other person besides applicant. Such bond shall be void when the license is duly returned to the office of the county clerk, duly executed and officially signed by some one authorized by law to solemnize the rites of matrimony.

SEC. 4614. Any person applying for license to marry another may introduce the parent or guardian of himself or the other party, or the certificate of such parent or guardian, duly attested, to prove to the satisfaction of the clerk that the parties to such marriage are of lawful age; and, in case the parties to such marriage (either or both) are not of lawful age, it shall be the duty of the clerk, before issuing the license, to require the party applying therefor to produce satisfactory evidence of the consent and willingness of the parent or guardian of such party or parties to such marriage, which shall consist in either the verbal or written consent thereto.

SEC. 4615. Any person obtaining license under the provisions of this act shall be required to return the same to the office of the clerk of the county court within sixty days from the date of such license; and, if the same be duly executed and officially signed by some person authorized by law to solemnize marriage in this state, the bond required by section 4613 shall be deemed null and void; otherwise, to remain in full force and effect.

SEC. 4616. If any person shall apply for and obtain a license to marry another without first obtaining the consent of such party, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars; and the party so offending shall, moreover, be liable to the party injured in any sum which a court or jury of competent jurisdiction may adjudge for damages.

SEC. 4617. If any clerk of any county in this state shall issue any license contrary to the provisions of this act, or to any persons who are declared by law as not entitled to the same, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred nor more than five hundred dollars.

SEC. 4618. Any person who shall presume to solemnize marriage in this state contrary to the provisions of this act, or who shall fail to officially sign and return any license to the party at the time of such marriage, shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred nor more than five hundred dollars.

SEC. 4619. Upon the return of any license, officially signed as having been executed, and that the parties therein named have been duly and according to law joined in marriage, the clerk issuing the same shall make a record thereof in the marriage record in his office; and he shall immediately make out a certificate of such record, giving names, date, book and page, together with the name of county and state, and attach such certificate to the license and return the same to the party presenting it. Said certificate shall be signed officially by the clerk and sealed with the county seal. *Act March 6, 1875.*

SEC. 4620. If any person authorized to solemnize any marriage in this state shall willfully make a false return of any marriage or pretended marriage to the clerk and recorder, or if the clerk and recorder shall willfully make a false record of any return of a marriage to him made, such offender shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than one hundred dollars. *Rev. Stat., chap. 94, sec. 25.*

CHAPTER CIV.

MARRIED WOMEN.

SECTION

- 4621. Property to be separate and not subject to debts of husband; how conveyed.
- 4622. Scheduling personal property to be provided for by law.
- 4623. May insure life of husband, when.
- 4624. What property remains to wife.
- 4625. May bargain and sell, what.
- 4626. What contracts not binding on husband.
- 4627. Deposit in savings bank, etc.
- 4628. Property of husband not liable for costs.
- 4629. Child apprenticed, condition.
- 4630. Execution enforced, how.
- 4631. She may give bond in separate suit.
- 4632. No security required of husband on sale, when.

SECTION

- 4633. Property of, not liable for debts of husband contracted before marriage.
- 4634. Schedule, where to be filed; *prima facie* evidence of its statements.
- 4635. Person selling or giving property to, may schedule same; effect of recording conveyance, etc.
- 4636. Right to separate property not forfeited by failure to schedule; burden of proof, etc.
- 4637. Husband's custody only raises presumption of agency.
- 4638. Act not construed to abridge jurisdiction of courts of equity to afford protection to separate rights.
- 4639. Act to be liberally construed.
- 4640. Form of schedule.

SECTION 4621. The real and personal property of any *femme covert* in this state, acquired either before or after marriage, whether by gift, grant, inheritance, devise or otherwise, shall, so long as she may choose, be and remain her separate estate and property, and may be devised, bequeathed or conveyed by her the same as if she were a *femme sole* (a); and the same shall not be subject to the debts of her husband.

SEC. 4622. The general assembly shall provide for the time and mode of scheduling the separate personal property of married women. *Art. IX, secs. 7 and 8, Const.*

SEC. 4623. It shall be lawful for any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee,

(a) See *Holland v. Moon*, 39—120. A married woman is not bound by her bond for title. *Felkner v. Title*, 39—357. If a purchaser under a title-bond from a married woman makes any payments, he will have a lien on the land for reimbursement, upon her disaffirmance of the contract. *Ib.* The constitution of 1874 did not divest the husband of rights vested before its adoption. *Schryock v. Cannon*, 39—434. A married woman's executory contract for the conveyance of land is void. *Christman v. Parter*, 38—31. Under the constitution of 1874, a married woman can convey her lands as a *femme sole*, and, though the deed be defectively acknowledged, it will be good between the parties. *Roberts v. Wilcoxon & Ros*, 36—355. Property acquired by a married woman since the adoption of the constitution of 1874 is her sole property, as though conveyed to her separate use; and advancements to her by the husband will be presumed to be gifts. *Ward v. Estate of Ward*, 31—586. If a married woman allow her husband to control her property as his own, he may claim the proceeds. *Buck v. Lee*, 36—525. A married woman may mortgage her property to secure her husband's debts. *Scott v. Ward*, 35—489; *Collins v. Wassell*, 31—17.

to cause to be insured, for her sole use, the life of her husband, for any definite period, or for the term of his natural life; and in case of her surviving her husband, the sum or net amount of the insurance becoming due and payable by the terms of the insurance shall be payable to her and for her use; and in case of the death of the wife before the decease of her husband, the amount of said insurance may be made payable to his or to her children, for their use, and to their guardian, for them, if they shall be under age, as shall be provided in the policy of insurance; and such sum or amount of insurance so payable shall be free from the claims of the representatives of the husband, or of any of his creditors; but such exemption shall not apply where the amount of premium annually paid out of the funds or property of the husband shall exceed the sum of three hundred dollars.

SEC. 4624. The property, both real and personal, which any married woman now owns, or has had conveyed to her by any person in good faith and without prejudice to existing creditors, or which she may have acquired as her sole and separate property; that which comes to her by gift, bequest, descent, grant or conveyance from any person; that which she has acquired by her trade, business, labor or services carried on or performed on her sole or separate account; that which a married woman in this state holds or owns at the time of her marriage, and the rents, issues and proceeds of all such property shall, notwithstanding her marriage, be and remain her sole and separate property, and may be used, collected and invested by her, in her own name, and shall not be subject to the interference or control of her husband or liable for his debts, except such debts as may have been contracted for the support of herself or her children by her as his agent (b).

SEC. 4625. A married woman may bargain, sell, assign and transfer her separate personal property, and carry on any trade or business, and perform any labor or services on her sole and separate account; and the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property, and may be used or invested by her in her own name; and she may alone sue or be sued in the courts of this state on account of the said property, business or services.

SEC. 4626. No bargain or contract made by any married woman, in respect to her sole and separate property, or any property which may come to her by descent, devise, bequest, purchase, or the gift or grant of any person, and no bargain or contract entered into by any married woman, in or about the carrying on of any trade or business, under any statute of this state, shall be binding upon her husband, or render him or his property in any way liable therefor.

SEC. 4627. When any deposit shall be made in any savings bank or other institution by any woman, being or hereafter becoming a married woman, in her own name, it shall be lawful for the trustees or officers of such bank or institution to pay such depositor such sum or sums as may be due such woman, and the receipt or acquittance of such depositor shall be sufficient legal discharge to the said corporation thereof.

SEC. 4628. In an action brought or defended by any married woman, in

(b) A contract made by a married woman for the improvement or preservation of her separate estate will be presumed to have been made on the faith of it. *Henry v. Backbura*, 32—445. The contracts of a married woman will not be enforced against her separate estate, unless they are made in reference thereto, or for her personal benefit. *Stitchell v. Adams*, 23—316.

her name, her husband shall not, neither shall his property, be liable for the costs thereof, or the recovery therein. In an action brought by her for an injury to her person, character or property, if judgment shall pass against her for costs, the court in which the action is pending shall have jurisdiction to enforce payment of such judgment out of her separate estate or property.

SEC. 4629. No man shall bind his child to apprenticeship or service, or part with the control of such child, or create any testamentary guardian therefor, unless the mother, if living, shall in writing signify her assent thereto.

SEC. 4630. Whenever a judgment shall have been recovered against a married woman, the same may be enforced by execution against her sole and separate estate or property to the same extent and in the same manner as if she were sole (c).

SEC. 4631. In case it shall be necessary, in the prosecution or defense of any action brought by or against a married woman, to enter into any bond or undertaking, such bond or undertaking may be executed by such married woman with the same effect in all respects as if she were sole; and if the said bond or undertaking shall become broken or forfeited, the same may be enforced against her separate property. *Act April 28, 1873.*

SEC. 4632. No security shall be required of the husband upon the sale of the real property of his wife, where she is of sound mind, over the age of twenty-one years, and upon privy examination before the judge, or a commissioner by him appointed, requests that no order be made for the investment of the proceeds of the sale. *Civil Code, sec. 532.*

SEC. 4633. The property of a woman, whether real or personal, and whether acquired before or after marriage in her own right, shall not be sold to pay the debts of her husband contracted or damages incurred by him before marriage. *Rev. Stat., chap. 60, sec. 22.*

SCHEDULE OF SEPARATE PERSONAL PROPERTY.

SEC. 4634. A married woman, owning any separate personal property, may make a schedule of the same and file it in the recorder's office of the county where she then lives; and such schedule so filed, or a duly certified copy thereof, under the hand and seal of the recorder, shall be *prima facie* evidence, in all courts and places, that the property mentioned in the said schedule, together with the issues and increase of the same, is, and was at the date of the making of such schedule, the separate property of such married woman (d).

SEC. 4635. Any person who shall *bona fide* sell or give any property to a married woman may schedule and record the same as the separate property of such married woman, with the same and like effect as though the same had been done by such married woman; and any conveyance or will of property to a married woman, on being duly recorded, shall have all the effect of a schedule under this act.

(c) See *Chollar v. Temple*, 39—238.

(d) A married woman is not required to schedule her money. *German Bank v. Himstedt*, 42—62. Schedules can only be filed by a married woman, and a schedule filed by a *femine sole* will not avail upon her subsequent marriage. *Berlin v. Cantrell*, 33—611. Property for which scheduled property has been exchanged is not protected by the schedule. *Ib.*

SEC. 4636. The separate estate and property of a married woman shall not be forfeited, nor shall her right and title thereto be prejudiced, by a failure or neglect to file such schedule; but, in any suit, action or proceeding relating to said property, when the same has not been scheduled and recorded, the burden of proof shall rest on her to show that the same is her separate property.

SEC. 4637. The fact that a married woman permits her husband to have the custody, control and management of her separate property shall not of itself be sufficient evidence that she has relinquished her title to said property; but in such case the presumption shall be that the husband is acting as the agent or trustee of the wife (c). This presumption may be rebutted by any evidence establishing a sale or gift by the wife to the husband of such property.

SEC. 4638. This act shall not be construed to abridge the existing jurisdiction and powers of a court of equity to make a settlement upon the wife out of her separate estate and property, and otherwise protect her separate property rights; and such jurisdiction is hereby extended to securing to the wife her separate property, as defined and fixed by section 7, of article IX, of the constitution.

SEC. 4639. The rule that statutes, in derogation of the common law, shall be strictly construed, shall have no application to this act.

SEC. 4640. The schedule of a married woman's separate property may be in the following form:

STATE OF ARKANSAS, }
COUNTY OF PULASKI. }

Be it known, That I, Mary Fowler, wife of John Fowler, of the county and state aforesaid, own in my own right the property below described, which I hereby schedule as my separate property, to wit:

One bay horse, one piano, one United States bond for \$1,000. Witness my hand, this — day of —, A. D. 18—.

MARY FOWLER.

Act Dec. 15, 1875.

CHAPTER CV.

MEDICINE AND SURGERY—PRACTICE OF.

SECTION

- 4641. Physicians and surgeons to be registered.
- 4642. County clerk to keep registry book.
- 4643. Certificate of qualification for registry.
- 4644. Board of medical examiners; how appointed, term of office, etc.
- 4645. Official oath of examiners.
- 4646. Organization.
- 4647. Regular meetings of board; examinations; certificates.
- 4648. Special meeting of board to examine applicants.

SECTION

- 4649. Certificate of clerk, effect of.
- 4650. Fee of the clerk.
- 4651. Quorum of board; fees to be paid by applicants.
- 4652. Who are exempt from examination, etc.
- 4653. Who are deemed physicians and surgeons.
- 4654. State board of medical examiners; their powers and duties.
- 4655. Practicing without registry a misdemeanor; penalty.

SECTION 4641. Hereafter no person shall practice medicine and surgery, or medicine or surgery, as a profession in this state without first being registered

(c) See *Rudd v. Peters*, 41—177.

as a physician and surgeon, or physician or surgeon, in the office of the clerk of the county court of some county in this state.

SEC. 4642. Each county clerk in this state shall keep in his office a well-bound book, in which he shall register the names of all such persons as shall be lawfully qualified, as hereinafter provided, and who shall apply for registration as physicians and surgeons, or physicians or surgeons, with the date of such registration.

SEC. 4643. Hereafter any person who may wish to practice as physician and surgeon, or either, in this state shall be allowed to register as such, who shall file with the clerk of the county court of any county in this state a certificate of qualification, signed by a majority of the county board of medical examiners of the county in which he or she offers to register. *Provided*, that no person shall be allowed to register as physician or surgeon until he or she shall have attained the age of twenty-one years. *Provided, further*, that any person living in a county in which no board is organized may apply to the board of some other county, or to the state board.

SEC. 4644. Immediately after the passage of this act the county judge of each county in this state shall appoint for his county a board of medical examiners, consisting of three persons, who shall be citizens of such county, and learned in the sciences of medicine and surgery, of good moral character, and duly registered under this act, who shall hold their offices until the first term of such county court, in the year 1882, at which time, and every four years thereafter, said board shall be again filled by appointment, as above provided; and, should a vacancy occur in said board at any time, the same shall be filled by appointment made by the county judge.

SEC. 4645. The members of said board shall, before entering upon the discharge of their duties, take the official oath prescribed by the constitution of this state.

SEC. 4646. At the first meeting of the members of such board after they shall have been appointed, preparatory to the transaction of the business assigned them under this act, they shall organize by electing one of their members as president and another as secretary.

SEC. 4647. The regular meetings of such board shall be held quarterly, at the court-house of the proper county, on the first Mondays in January, April, July and October in each year; and, when so assembled, said board shall faithfully and impartially examine all such persons as shall appear before them for that purpose touching their qualifications to practice medicine and surgery, or either; and all such persons as shall satisfy such board of examiners, or a majority of them, that he or she is twenty-one years of age, of good moral character, and duly qualified in knowledge and capacity to practice medicine and surgery, or either, shall receive from such board a certificate of qualification as physician and surgeon, or either physician or surgeon, as the case may be, which certificate shall entitle such person to registration under the provisions of sections 4642 and 4643. *Provided, always*, that such physician or surgeon shall be registered in the same county in which he or she was examined, except as provided in section 4654.

SEC. 4648. Any person desiring to be examined at any other than the time of the regular quarterly meeting shall notify the president of the board

of such desire, whose duty it shall be to assemble the board as soon as practicable and examine such applicant.

SEC. 4649. The county clerk shall give to every person registered under this act a certificate of registration, over his signature and official seal, and such certificate shall authorize any such person to practice as a physician or surgeon, or both, as the case may be, in any county in this state.

SEC. 4650. The clerk shall receive, as his fee, for all services required of him under this act, in each case, the sum of one and a half dollars.

SEC. 4651. Any two members of said board shall constitute a quorum for the transaction of all business; and each applicant for examination shall pay, in advance, to the secretary, to be divided equally among the members of such board, the sum of six dollars, which shall be their only compensation.

SEC. 4652. All physicians and surgeons who have been continuously engaged in a reputable practice in this state for a period of five years next before the passage of this act shall not be required to undergo the examination herein provided for, but shall, upon satisfactory proof before the county clerk of such continuous practice, and the payment of the fee allowed that officer, be duly registered. Females, who are now, or may hereafter, engage in the exclusive practice of midwifery, are exempted from the provisions of this act.

SEC. 4653. Any person who shall prescribe or administer medicine for, or who shall in any manner treat, diseases or wounds for pay shall be deemed physicians and surgeons under this act.

SEC. 4654. Immediately after the passage of this act, the governor shall appoint a state board of medical examiners, consisting of five members, learned in the sciences of medicine and surgery, and of good moral character, and duly registered, who shall organize in the manner prescribed for county boards by this act, and shall hold their meetings at such times and places as the president may direct, for the purpose of the re-examination of any person, at his or her request, who has been refused registration by any county board; and, if upon such re-examination, such person shall be found qualified to practice medicine and surgery, said state board shall grant to him or her a certificate accordingly, which certificate shall entitle the person so receiving it to be registered, as provided in this act, in any county in this state. Such applicant shall pay the state board a fee of five dollars. *Provided*, that no person desiring to practice medicine under this act shall be excluded therefrom on account of any particular system or school of medicine that he may desire to practice.

SEC. 4655. Any person who shall hereafter engage in the practice of medicine and surgery, or either, in this state, without being registered under this act, shall be deemed guilty of a misdemeanor, and, upon conviction in any court having jurisdiction under the laws of this state, shall be fined in any sum not less than ten nor more than one hundred dollars. And each day said physician shall practice medicine without being registered, as hereinbefore required, shall be deemed a separate offense. *Act March 9, 1881.*

CHAPTER CVI.

MILLS AND MILLERS.

SECTION

4656. All grist-mills that grind for toll, public.
4657. On any water-course, public, when.
4658. Grain, etc., to be ground in turn.
4659. Rates of toll.
4660. Bolting-machine turned by hand, use of.
4661. Owner or occupant accountable for, what.

SECTION

4662. Not liable for loss, when.
4663. To give due attendance and assistance, etc.
4664. To keep certain measures and dishes.
4665. Penalty for breach of this act.
4666. Millers exempt from what service.

SECTION 4656. All grist-mills which grind for toll are hereby declared public mills.

SEC. 4657. Every water grist-mill that may be built and established on any water-course, by order of any statute or lawful order of any court, shall be deemed a public mill, and shall grind for customers at least one-half its time.

SEC. 4658. All grain brought to a public mill shall be ground in turn as the same shall be brought, and shall be ground as well as the nature and condition of the mill will permit; but nothing in this section shall be so construed as to prevent the owner of any mill from grinding his own grain at any time.

SEC. 4659. The owner or occupier of any public mill shall be entitled to toll all grain ground thereat, according to the following rates: first, if a water or steam-mill, the one-eighth part, and no more; second, if a horse-mill, the one-fourth, when the owner or occupier of such mill finds the team for grinding the same, and when the team shall be furnished by the owner of the grain, and with the consent of the owner or occupier of the mill, the toll shall be the same as is allowed to the owner or occupier of a water-mill, and no more.

SEC. 4660. When the bolting machine of any mill shall be so constructed as to require it to be turned by hand, the owner or occupier of the mill shall only be bound to permit the owner of the grain to use the same.

SEC. 4661. The owner or occupier of a public mill shall be accountable for the safe keeping of all grain received for the purpose of being ground, and shall, when called for, deliver the flour or meal made therefrom, together with the bags or casks in which the same was received, to the owner or his agent.

SEC. 4662. The preceding section shall not be so construed as to charge the owner or occupier of any public mill, or make him liable for the loss of any grain, bags or casks, when such loss shall happen without the fault or neglect of the owner or occupier, or by any unavoidable accident; and no such owner or occupier of a mill shall pay for any bags or casks that are not marked with the owner's name.

SEC. 4663. The owner or occupier of a public mill shall, when the mill is in repair and fit for business, give due attendance to his customers, and assist in loading and unloading all grain which shall be brought by them for the purpose of being ground and the material which shall be made therefrom.

SEC. 4664. There shall always be kept in a public mill, by the owner or

occupier thereof, an accurate half-bushel measure and an accurate set of toll dishes.

SEC. 4665. For each breach of any of the provisions of this act, by the owner or occupier of a public mill, he shall forfeit and pay to the party aggrieved by such breach ten dollars, to be recovered by civil action, with costs. *Rev. Stat., chap. 99.*

SEC. 4666. The keeper of each grist-mill which grinds for toll, and comes under the foregoing provisions, shall be exempt from serving on juries, working on roads, and the performance of military duty, except in case of invasion, insurrection or imminent danger; but no person shall be considered a public miller until he shall have his name recorded as such in the recorder's office of his county. *Act Dec. 14, 1846.*

CHAPTER CVII.

MILLS AND MILL-DAMS.

SECTION

- 4667. Dam across any water-course may be erected, when.
- 4668. Owner of land in fee simple on one side, including part of bed, may erect dam.
- 4669, 4670. Petition to be filed.
- 4671. Form and requisites of.
- 4672. Additional requisites of.
- 4673. Writ of *ad quod damnum* to issue.
- 4674. What shall be found by jury.
- 4675. Additional finding, when.
- 4676. In such case notice to be served, how.
- 4677. Inquest of jury, how returned.
- 4678. Cause against erection of dam to be shown, how.
- 4679. Summons, how served.
- 4680. In what cases court shall not permit dam to be erected.
- 4681. How court further to consider, and what order to make.

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- 4682. What decree, where party has prayed for ground on which to abut his dam.
- 4683. Such order and decree, rights and privileges to be upon conditions.
- 4684. What such conditions shall be.
- 4685. Condition as to rebuilding and repairing.
- 4686. Consequence of non-compliance with condition.
- 4687. Dam already built, how to be raised.
- 4688. How far prosecutions and actions not to be barred by such proceedings, order, etc.
- 4689. Damages for building dam, etc., without permission, what and how recovered.
- 4690. Such dams, etc., public nuisances, how dealt with.
- 4691. Person failing to build, rebuild, etc., other persons to have permission to do so.
- 4692. Same course to be pursued where mills are propelled by water from lakes through canals.

SECTION 4667. Any person may erect a dam across any water-course, not being a navigable stream, if such person is the proprietor of the land through which the water-course runs at the point where he proposes to erect his dam, by proceeding as in this chapter provided.

SEC. 4668. Any person, being the owner in fee simple of the land on one side of a water-course, including part of the bed of such water-course at the point where he proposes to erect a dam, may erect such dam by proceeding as in this chapter is provided.

SEC. 4669. In the case supposed in section 4667, the person proposing to erect a dam, if such dam shall be likely to overflow any lands on such stream belonging to other persons, shall file his petition for that purpose in the circuit

court of the county in which he proposes to erect his mill or other machinery connected with the dam.

SEC. 4670. If a mill or other dam be proposed to be erected near a county line, so as to overflow lands in an adjoining county, then the person proposing to erect such dam shall apply to the circuit court of both counties for the relief hereinafter provided.

SEC. 4671. The petitioner shall set forth a description of the land and an abstract of the title thereto, the name of the water-course, and a description of the point at which he proposes to erect his dam, the altitude of the dam which he proposes to erect thereat, the kind of mill and other machinery which he proposes to connect with the dam.

SEC. 4672. In the case supposed in section 4668, the person proposing to erect a dam shall also file his petition, and, in addition to the requisitions of section 4671, shall set forth the name and place of residence of the proprietor of the land on the other side of the water-course whereon he would abut his dam, and on what side of the water-course he proposes to erect his mill or other machinery in connection with his dam. And the petition shall be filed in the county wherein he proposes to erect such mill or other machinery.

SEC. 4673. On filing the petition, it shall be the duty of the court to cause a writ of *ad quod damnum* to be issued under the seal of the court, directed to the sheriff, commanding him to summon twelve fit persons of his county to meet at the place where the mill is proposed to be erected, or the land overflowed, on a day named in the writ, then and there to inquire by said jury touching the matter contained in the petition, a copy of which shall accompany the writ.

SEC. 4674. It shall be the duty of the sheriff to attend with the jury on the day and at the place appointed, and, upon full examination and inquiry by such jury, they shall find, first, what will be the amount of damage to each proprietor by reason of inundation consequent upon the erection of the dam as proposed; second, whether the mansion-house of any such proprietor, or the out-houses, curtilages or gardens thereunto immediately belonging, or orchard, will be overflowed thereby; third, whether, and to what extent, ordinary navigation and fish of passage will be obstructed by such erection, and whether and by what means the same may be prevented or diminished; fourth, whether the health of the neighborhood will be materially endangered in consequence of such erection.

SEC. 4675. In the case supposed in section 4668, the sheriff shall further find by the jury the value of one acre of ground on the opposite side of the water-course, to include the place where the petitioner would abut his dam or build his mill or other machinery, and the sheriff shall, with the assistance of the jury, set the same apart by metes and bounds.

SEC. 4676. In such cases the sheriff shall notify the proprietor of the land whereof one acre is prayed for of the time and place when and where he will take the inquest of the jury, if such proprietor be in his county, and, if not, he shall set up the notice at the house of the tenant of such land, and, if there be no tenant thereof, then he shall set up such notice at some conspicuous place on the land. In discharging the foregoing duties the sheriff shall have power, with the jury, to go into and act in an adjoining county when necessary.

SEC. 4677. The inquest of the jury shall be reduced to writing, and, being signed by each of the jurymen, shall be returned by the sheriff, together with the writ and statement of the manner in which he executed it, into the court whence it issued without delay.

SEC. 4678. The court shall, on the return of the inquest, cause the proprietor of the land one acre whereof shall have been prayed for, and the several persons proprietors of the land found by the inquest returned to be liable to damage, to be summoned to appear in the same court, on a day to be named in the summons, and show cause, if any they can, why the person petitioning should not have permission to erect his dam.

SEC. 4679. If such proprietor reside in the county in which the lands lie, the service of the summons shall be as in ordinary cases; but if not a resident in the county, then the service shall be by setting up a copy at the house of the tenant on the land, or, if there be no tenant there, at some conspicuous place on the land.

SEC. 4680. If, upon a view of the inquest returned by the sheriff, and other evidence, if any such shall be produced, it shall appear to the court that the mansion-house of the proprietor, or out-houses, curtilages or gardens thereunto belonging, or orchard, or field, will be overflowed, or that the health of the neighborhood will be materially annoyed by the stagnation of the waters consequent upon the erection of the proposed dam, the court shall not permit such dam to be erected.

SEC. 4681. If, upon view, it shall appear to the court that none of the evils provided against in the last preceding section are likely to ensue, the court shall then consider whether, all circumstances weighed, it is reasonable that the permission to erect the dam as prayed for should be given, and thereupon make an order giving permission or not accordingly.

SEC. 4682. Where the party petitioning shall have prayed for one acre of ground whereupon to abut his dam, the court shall include in its order granting permission to erect the dam a decree vesting such acre of land and the title thereof in the party petitioning, his heirs and assigns, forever.

SEC. 4683. The order and decree authorized by the last two preceding sections, and the rights and privileges thereby granted, shall in all cases be upon and subject to the conditions hereinafter expressed.

SEC. 4684. First, such conditions in reference to the obstructions of fish of passage as the court shall think proper to impose; second, that all damages and valuations made and assessed by the jury shall be paid; third, that the dam and mills or other machinery shall be commenced within one year, and the same shall be finished and ready for business in three years from the date of the order of permission.

SEC. 4685. Whenever the dam and mill or other machinery shall be destroyed or materially impaired, the same shall be rebuilt or repaired within three years thereafter; but if the owner of such dam and mill be an infant, then the usual saving in favor of infants.

SEC. 4686. In case of non-compliance with any of the conditions concerning building, rebuilding or repairing, where the land of another shall have been decreed by the court for the purpose of an abutment, the same shall revert to and revest in the original owner, or his legal representatives.

SEC. 4687. Any owner of any dam and mill, and other machinery erected

in virtue of this act, may raise his dam by permission of the court, under and by the same proceedings, regulations and conditions hereinbefore provided.

SEC. 4688. The inquest of the jury, or the order and permission of the court founded thereupon, shall not bar any prosecution or action which any person would have had in law had this act not been passed, except for such injuries as were actually foreseen and estimated by the jury.

SEC. 4689. Any person who shall build or raise any dam or any other stoppage or obstruction in or across any water-course without first obtaining permission from the proper court, according to law, and shall thereby work any material injury to any other person by overflowing his lands, shall forfeit to the party injured double damages for such injury, to be recovered by civil action. .

SEC. 4690. All dams, stoppages or obstructions not made according to law shall be deemed to be public nuisances, and shall be dealt with accordingly.

SEC. 4691. If any person, or his legal representatives, to whom permission to erect a dam in virtue of this chapter shall have been given shall fail to build, rebuild or repair the same, together with the mill or other machinery connected therewith, according to the requisitions of this chapter or the conditions of the permission, it shall be lawful for any other person owning the land on one side of the water-course at the point where such dam was erected, or was intended to be erected, or owning the land below or above, to build a dam and mill or other machinery thereon, as if no such permission had been given, without incurring any liability on account of taking off or backing the water on such dam.

SEC. 4692. Where mills or other machinery are proposed to be built, so as to be propelled by water drawn from lakes through canals cut therefrom, if the canal intended to be cut will pass through the land of other persons, the same mode shall be pursued as in cases of streams. *Rev. Stat., chap. 98.*

CHAPTER CVIII.

MILITIA.

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COMMANDER-IN-CHIEF.

SECTION 4693. The governor shall be commander-in-chief of the military and naval forces of this state, except when they shall be called into the actual service of the United States. *Art. VI, sec. 6, Const.*

SEC. 4694. He shall appoint and commission all general, field, company and staff officers, all of whom shall hold their positions during good behavior in the service, unless the exigencies of the service shall cease to require them, in which case he may, by general and special orders, provide for their muster out of service.

SEC. 4695. The staff of the commander-in-chief may consist of all such officers, except adjutant-general, as compose the staff of the general commanding the army of the United States, and shall have the same rank. The officers and men of the state guard and reserve militia, and of the various staff depart-

ments, shall receive, when on duty, the same pay and allowances that are allowed to persons of like rank in the army of the United States.

SEC. 4696. The commander-in-chief may, by general and special orders from time to time, as he may deem necessary, divide the state into military divisions, districts and sub-districts, and detail officers to command the same, as the exigencies of the service may require, and shall, from time to time, issue such general and special orders as may be requisite to render the military force of this state efficient and its organization complete, and shall have power to negotiate with the general government for the loan or purchase of arms for the use of the military force of this state. *Act July 14, 1868.*

SEC. 4697. The governor shall, when the general assembly is not in session, have power to call out the volunteers or militia, or both, to execute the laws, repel invasion, repress insurrection and preserve the public peace in such manner as may be authorized by law. *Art. XI, sec. 4, Const.*

SEC. 4698. It shall be the duty of the commander-in-chief, when he is advised or believes that the enforcement of the civil or criminal law is or may be so obstructed that it would be dangerous or impossible for the sheriff to enforce the same without a posse, to authorize the sheriff of such county, or his deputy, to call upon the commander of the state guard or reserve militia to render such aid as is necessary to execute the law in such cases. The expense of such militia as a posse shall be provided for by the county court, and paid out of the county treasury of the county wherein such service was rendered. *Act July 14, 1868.*

ADJUTANT-GENERAL.

SEC. 4699. The office of adjutant-general is hereby abolished. *Act March 11, 1879, sec. 2.*

SEC. 4700. The governor's private secretary shall perform all the duties now performed by the adjutant-general. *Ib., sec. 1.*

SEC. 4701. It shall be his duty to furnish all forms and blanks for returns that may be necessary, and to keep a book, in which he shall make a fair entry of all returns by him received, which shall be subject at all times to the inspection of the brigadier-generals, major-generals and the executive of the state. *Act Jan. 21, 1861, sec. 7.*

WHO LIABLE TO MILITARY DUTY.

SEC. 4702. The militia shall consist of all able-bodied male persons, residents of the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or this state, and shall be organized, officered, armed and equipped and trained in such manner as may be provided by law. *Art. XI, sec. 1, Const.*

SEC. 4703. All such able-bodied persons, not exempted by the laws of the United States, shall be liable to military duty, excepting—

First. The commissioned officers who shall have served as such in the state guard of this state for the period of five years, and who shall have been honorably discharged.

Second. Every non-commissioned officer, musician and private of every company or troop in the state guards who shall uniform himself according to the

provisions of this act, who shall have performed service in any company or troop for the period of five years in the aggregate from the time of his first enrollment, shall be exempt from military duty, except in cases of war, insurrection or invasion.

Third. All officers of this state, executive, legislative and judicial; all ministers of the gospel, physicians, keepers of public grist-mills and ferries, druggists, and all persons who, from scruples of conscience, may be averse to bearing arms.

CLASSIFICATION OF.

SEC. 4704. The militia force of this state shall consist of two classes:

First. The state guard.

Second. The reserve militia.

State Guard.

SEC. 4705. The state guard shall consist of such persons liable to military duty as shall voluntarily enroll and uniform themselves for service therein.

SEC. 4706. The commander-in-chief shall designate the number of men in each county allowed to enroll in the state guard, and have power to reject any person offering himself for enrollment in the same.

SEC. 4707. The men composing the state guard shall be allowed to retain their arms and equipments in their possession, at the discretion of their immediate commanding officer, during their term of service, and shall be held responsible for the same; and it shall be their duty to keep them in good order and ready for use when called upon by the proper authority, and to answer all details made by proper authority, whether singly or otherwise.

SEC. 4708. Every officer, non-commissioned officer, musician and private in the state guard shall hold his uniform and equipments, as required by the provisions of this act, free from all suits, distresses, executions or sales for debt or payment of taxes. *Act July 14, 1868.*

Reserve Militia.

SEC. 4709. The reserve militia shall consist of all such persons liable to military duty as have not enrolled in the state guard, and, except the commissioned officers in the same, shall, under the direction and superintendence of the commander-in-chief, and from time to time, but as often as once in every two years, be enrolled by such officer as may be detailed by the commander-in-chief. Such enrollment shall distinctly specify the name, age, residence and occupation of each person so enrolled. The officer making such enrollment shall file one copy thereof in the office of the clerk of the county court wherein the same is made, and forward one copy thereof to the governor's private secretary. The commander-in-chief shall issue such orders as he may deem necessary to carry into full force and effect the enrollment herein provided for, and also regarding the proper course to be pursued by persons claiming to be exempt from military duty.

SEC. 4710. Any member of the reserve militia may commute for the military duty and for the arms and accouterments required by law by the payment

in each year of the sum of five dollars, which commutation shall be paid in the manner and at the time provided for the payment of state taxes to the collector of taxes in the county in which such person may reside, for which payment the collector shall give his receipt in such form as the commander-in-chief may prescribe.

SEC. 4711. The moneys thus collected shall, by the collector, be paid over to the treasurer of the county, to the credit of the military fund of the state, at the time provided by law for the payment of the revenue of the state in the treasury or the collector's office, at which time the collector shall transmit a roll of such persons as shall have paid such commutation to the governor's private secretary, and the correctness of such rolls shall be verified by such collector; but no commutation paid under this section shall relieve any person liable to military duty from such duty in case of insurrection or invasion or imminent danger thereof.

SEC. 4712. Reserve militia shall, in all cases, be subject to detail the same as the state guard, and the officers appointed to command the several companies of the same in each county shall receive from the commander-in-chief all arms and equipments provided for the use of said reserve militia, and receipt and be responsible for the same, and shall only place such arms and equipments in the hands of the non-commissioned officers and privates of such reserve militia when detailed or ordered into actual service; and it shall be the duty of such non-commissioned officers and privates to immediately return, in good order, to the officer responsible all such arms and equipments when such service shall have ceased (*).

GENERAL ORGANIZATION.

SEC. 4713. The state guard and the reserve militia may be organized into companies, batteries, regiments, brigades and divisions, in the same manner as the army of the United States, and the commander-in-chief may, by general and special orders, provide for the organization of the same, detail officers to command the brigades and divisions, and such staff officers as shall be required for that duty; and he may, from time to time, as he shall deem necessary, provide by general and special orders for inspections, musters, instructions, reviews or other duties.

SEC. 4714. After such organization has been duly completed, all officers, non-commissioned officers, musicians and privates of the state guard and reserve militia, when in actual service in time of war or public danger, shall, as far as practicable, be governed by the same rules and regulations as the armies of the United States. *Provided*, that no person shall suffer capital punishment, or be imprisoned for a longer period than six months, by sentence of a court-martial.

(*) By an act approved March 24, 1883, it is made the duty of the governor to direct the sheriffs of the several counties to gather up the guns and other accouterments belonging to the state not in the possession of regularly organized companies, and deliver the same to him at Little Rock. If any person holding such arms or accouterments, unless he is a member of some organized military company, or specially authorized to hold the same, shall refuse to deliver them to the sheriff upon demand, he may be convicted of a misdemeanor, and fined not less than twenty nor more than fifty dollars. As the act does not appear to be of a permanent nature, it is not embraced in this digest. See *Acts of 1883, page 187*.

RETENTION OF MILITARY PROPERTY.

SEC. 4715. Any person belonging to the military forces of this state, who shall, contrary to the lawful order of the proper officer, retain in his possession or control any military property in this state, shall, in addition to the military offense of disobedience of orders, be deemed guilty of a misdemeanor, and, upon conviction thereof before a court having jurisdiction, shall be fined not less than ten dollars nor more than one hundred dollars, and any commanding officer may take possession of such property wherever the same may be found.

FINES GO TO COUNTIES.

SEC. 4716. All fines and penalties that shall become due and payable from the members of the state guard and reserve militia, for non-attendance at inspection, muster, instruction, review or other duty, and the amount of which shall from time to time be prescribed by the commander-in-chief, in general orders, and all fines and penalties that may be assessed and collected by virtue of the sentence of any court-martial, shall be paid into the county treasury (*). All fines, penalties, payments, charges, contributions and assessments herein or hereafter provided for shall, upon the order of the commander-in-chief, be received and collected by the same officers, and in the same manner, that other fines and state and county taxes are now or may hereafter be collected. *Act July 14, 1868.*

SUBSTITUTES.

SEC. 4717. Any person called upon to perform a tour of duty in the militia service of this state shall be excused from so doing, provided he furnish an able-bodied substitute in his stead, who is not liable himself to perform duty therein. No substitute shall be received unless he be armed and equipped as provided by law. *Act Feb. 3, 1843, sec. 48.*

VOLUNTEER ORGANIZATIONS.

SEC. 4718. Volunteer companies of infantry, cavalry or artillery may be formed in such manner and with such restrictions as may be provided by law. *Art. XI, sec. 2, Const.*

SEC. 4719. There may be organized in each county four volunteer companies—one of infantry, one of light infantry or riflemen, one of cavalry and one of artillery—who shall elect their officers at the first election at a time and place to be ordered by the colonel of the regiment, upon whose certificate of election commissions shall issue; and at all subsequent elections, at a time and place fixed by the company, and commissions to the officers elected at such subsequent elections shall issue on the certificate of the commanding officer of the company.

SEC. 4720. The officers of every volunteer company shall be a captain, one first, one second and one third lieutenant.

SEC. 4721. Every volunteer corps shall be wholly independent of the militia of the county, except at battalion and regimental parades, when such

(*) See SEC. 5860.

company shall parade as a part of the county regiment, and in regard to such parades all existing laws shall fully apply to such volunteer companies.

SEC. 4722. It shall be lawful for the volunteer companies in each brigadier-general's command to organize themselves into battalions and regiments, the officers whereof shall be elected by the commissioned officers of the companies, at a time and places to be directed by the brigadier-general, on application by the captains of a sufficient number of such companies to form a volunteer regiment; such election shall be held by each captain for his own company, who shall report the vote of his company to the brigadier-general, and the latter shall certify the election to the governor.

SEC. 4723. Each volunteer company shall parade and drill as often and on such days as shall be fixed by its by-laws, not being less than once every month; and may establish by by-laws such fines for non-attendance at drill, disobedience, unsoldier-like conduct, and the like, as it may think proper.

SEC. 4724. Each of such companies may hold a court-martial of its commissioned officers, or a majority of them, as often and at such times and places as by its by-laws may be established, and such court, or any member of it, shall have power to administer oaths in regard to all matters which may properly come before it; and may fine for contempt in a sum not more than ten dollars.

SEC. 4725. In making up the records of any volunteer company, battalion or regimental court-martial, it shall not be necessary to state more than that the person fined was absent at a certain named parade or drill, and offers no excuse, or no sufficient excuse for his absence, and is therefore fined the amount mentioned, which shall be, as to form, to all intents and purposes a valid judgment; and it shall in all cases be presumed that the person so fined was regularly a member of the company; that the parade or drill at which he was absent was regularly ordered or fixed by the by-laws; that it was proven to said court that he was duly notified to attend such parade or drill, and also that he received due notice to appear before said court and answer, and that the fine assessed is the proper amount fixed by the by-laws, with all other presumption in favor of the judgment of such courts as would apply in case of a court of a superior jurisdiction.

SEC. 4726. The captain of each volunteer company shall have power by written appointment to constitute one member of the company its collector, and may issue to such collector, whenever a fine has been assessed by the court-martial, his warrant, in the name of the state, reciting the imposition of such fine, and commanding the collector to proceed by levy and make the same, and return the warrant within ten days from its date; and each such collector shall have, in all respects, the same power as to levy and sale under said warrant as a constable has by law under executions from a justice of the peace, and may sell any property levied, after ten days' notice put up in one public place in the county, at which public place the sale shall be made. No delivery bond shall be allowed to be given on any such warrant, and levy may be made on any of the personal property of the defendant. *Act Jan. 9, 1845.*

EXEMPTION FROM ARREST, ETC.

SEC. 4727. The volunteer and militia forces shall, in all cases (except treason, felony and breach of the peace), be privileged from arrest during their attendance at muster and the election of officers, and in going to and returning from the same. *Art. XI, sec. 3, Const.*

SEC. 4728. All persons subject to military duty shall have the privilege of passing over, free of charge, toll-bridges, turnpike roads and ferries while going to or returning from any place where they may be ordered to attend for military duty.

SEC. 4729. Any keeper or owner of a toll-bridge or turnpike, or any ferryman failing to ferry over, or refusing to let any such person pass, shall be fined in any sum not less than three nor more than ten dollars. *Act Feb. 3, 1843.*

CHAPTER CIX.

MONEY AND INTEREST.

SECTION

MONEY.

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MONEY.

SECTION 4730. All accounts and other computations of money in the treasury and other public offices, whether state or local, and all accounts arising from proceedings in courts of justice, shall be kept and made out in the money account of the United States—that is to say, in dollars or units, dimes or tenths, cents or hundredths, mills or thousandths; a dime being the tenth part of a dollar, a cent a hundredth part of a dollar, and a mill the thousandth part of a dollar.

SEC. 4731. In all judgments or decrees rendered by any court of justice for any debt, damages or costs, and on all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment or other proceeding shall be considered erroneous for such omission. *Rev. Stat., chap. 100.*

INTEREST.

SEC. 4732. All contracts for a greater rate of interest than ten per centum per annum shall be void as to principal and interest, and the general assembly shall prohibit the same by law (a); but when no rate of interest is agreed upon, the rate shall be six per centum per annum. *Art. XIX, sec. 13, Const.*

SEC. 4733. The parties to any contract, whether the same be under seal or not, may agree in writing for the payment of interest not exceeding ten per centum per annum on money due or to become due (b).

SEC. 4734. No person or corporation shall, directly or indirectly, take or receive in money, goods, things in action, or any other valuable thing, any greater sum or value for the loan or forbearance of money or goods, things in action, or any other valuable thing, than is in section 4733 prescribed.

SEC. 4735. All bonds, bills, notes, assurances, conveyances, and all other contracts or securities whatever, whereupon or whereby there shall be reserved, taken or secured, or agreed to be taken or reserved, any greater sum or greater value for the loan or forbearance of any money, goods, things in action, or any other valuable thing, than is prescribed in this act shall be void (bb). *Act Feb. 9, 1875, secs. 1-3 (†).*

SEC. 4736. It shall be lawful for all parties loaning money in this state to reserve, or discount, interest upon any commercial paper, mortgages or other securities, at any rate of interest agreed upon by the parties, said rate of interest not to exceed ten per centum per annum, whether such paper or securities for principal or interest be payable in this state, or any other state, kingdom or country. *Act July 13, 1868, sec. 7, as amended by act Feb. 9, 1875.*

Rule for Computing.

SEC. 4737. For the purpose of calculating interest, a month shall be considered the twelfth part of a year, and as consisting of thirty days; and interest for any number of days less than a month shall be estimated by the proportion which such number of days shall bear to thirty.

SEC. 4738. In calculating interest, where partial payments may have been

(a) Under this provision, commercial paper tainted with usury is absolutely void, even in the hands of an innocent holder. *German Bank v. Deshon*, 41—331. Interest on a debt for goods sold runs from the time stipulated for payment, which will be presumed to be the time of delivery. *Roberts v. Wilcoxon & Rose*, 36—355. Since the adoption of the constitution of 1874, the indorsement of the county treasurer that scrip is "not paid for want of funds" will not cause it to bear interest. *Jacks v. Turner*, 36—89. Interest is stopped by a lawful tender. *Cole v. Moore*, 34—582; *Hamlett v. Tallman*, 30—505.

(b) A promissory note, payable at a future day, and bearing over six per cent. interest from date, without saying "until paid," bears only six per cent. after maturity. *Gardner v. Barnett*, 36—476; *Pettigrew v. Summers*, 32—571; *Woodruff v. Webb*, 32—612; *Newton v. Kennerly*, 31—626.

(bb) Usury can be pleaded only by parties and privies, not by strangers. *Ford v. Hancock*, 36—248; *Pickett v. Merchants' National Bank*, 32—346. It is for the jury to decide whether a sale on credit for more than the cash price is intended as a *bona fide* sale, or as a cover for usury. *Ford v. Hancock*, *supra*. A note given for an account with interest, and bearing interest from date at ten per cent., is not usurious. *Wallis v. Lehman*, 36—569. As to note given for an account and including interest not due, see *White v. Friedlander*, 35—52. A mortgage or note in part usurious is void *in toto*; but a valid debt included in the note stands on its original merits. Crediting a usurious note with the amount of usury will not validate it. *Marks v. Metgehee*, 35—217. A person coming into equity to be relieved of an usurious debt must have paid or offered to pay the debt with legal interest. *Anthony v. Lawson*, 34—628; *Pickett v. Merchants' National Bank*, 32—346. Where usurious interest is carried in a general account for which a note is given, it taints the whole transaction. *Pickett v. Merchants' National Bank*, *supra*.

(†) Section 4 of this act was pronounced unconstitutional, in *German Bank v. Deshon*, 41—331.

made, the interest shall be calculated to the time when the first payment shall have been made, and such payment shall be applied to the payment of such interest; and if such payment exceed the interest, the balance shall be applied to diminish the principal, and the same course shall be observed in all subsequent payments; but in no case when a payment shall fall short of paying the interest due at the time of making such payment shall the balance of such interest be added to the principal (c).

SEC. 4739. Whenever any certain interest is or may be mentioned, and no period of time is stated for such rate of interest to be calculated, interest shall be calculated at the rate mentioned by the year, in the same manner as if the words "per annum" or "by the year" had been added to such rate. *Rev. Stat., chap. 80, secs. 10-12.*

Rate of Interest on Judgments.

SEC. 4740. Creditors shall be allowed to receive at the rate of six per cent. per annum on any judgment before any court or magistrate authorized to enter up the same, from the day of signing judgment until the effects are sold, or satisfaction be made. *Act July 13, 1868, sec. 2.*

SEC. 4741. Judgments or decrees upon contracts bearing more than six per cent. interest shall bear the same interest as may be specified in such contracts, and the rate of interest shall be expressed in all such judgments and decrees, and all other judgments and decrees shall bear interest at the rate of six per cent. per annum, until satisfaction is made as aforesaid (d). *Rev. Stat., chap. 80, sec. 4.*

(c) This section does not prevent probate courts from compounding interest in cases of abuse of trust by fiduciaries. *Price v. Peterson*, 38—494.

(d) Judgments bearing an excessive rate of interest can not be collaterally attacked. They must be corrected by appeal or impeached in chancery. *Chollar v. Temple*, 39—238. See *Badgett v. Jordan*, 32—154.

CHAPTER CX.

MORTGAGES (a).

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SALES UNDER MORTGAGES, ETC.

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SECTION 4742. All mortgages, whether for real or personal estate, shall be proved or acknowledged in the same manner that deeds for the conveyance of real estate are now required by law to be proved or acknowledged; and when so proved or acknowledged shall be recorded—if for lands, in the county or counties in which the lands lie, and, if for personal property, in the county

(a) The distinction between a mortgage and a conditional sale may be seen from the following decisions: *Porter v. Clements*, 3—364; *Johnson's exr. v. Clark*, 5—321; *Blakemore v. Byrnside*, 7—505.

Where a bill of sale, absolute upon its face, was intended by the parties as a security for money advanced, no matter what language is employed in expressing the terms of the contract, it will be held and treated as a mortgage. *Scott, White & Co. v. Henry & Cunningham*, 13—112; *Williams v. Cheatham*, 19—278.

Parol testimony is admissible to prove that a deed absolute on its face was intended as a mortgage and as a security for a loan or debt. *Johnson v. Clark*, 5—321; *McCarron v. Cassidy*, 18—34. A landlord's lien for rent is paramount to that of a mortgagee taking the mortgage with a notice of the tenancy. *Smith v. Meyer & Bro.*, 25—609. The mortgagor of real property has the ownership or fee, and his wife is entitled to dower therein. The mortgagee of real property, even after forfeiture, has no interest in the property subject to execution. *Burr v. Robinson*, *Ib.*, 277. A mortgage which has not been acknowledged as prescribed by the statute, though recorded, creates no lien on the mortgaged property as against creditors and subsequent purchasers, but is good as between the parties; and, on breach of the condition of payment, may be enforced against the mortgagee, and on his death against his administrator in preference to his general creditors. *Haskill v. Serier*, *Ib.*, 152. See note (b) *post*.

A mortgage free from fraud, though unrecorded, creates a valid lien, remaining after the death of the mortgagor against his administrator, heirs and general creditors, whether their debts existed at the date of the mortgage or were created afterward, and upon the faith of the property and without notice of the mortgage, and regardless of the merits of the creditor's claims; but as to attaching creditors, or persons obtaining specific liens, or even subsequent purchasers, with full knowledge that they are defeating another's lien, and who intend to do so, it is void, however honestly made. *Martin v. Ogden*, 41—186.

A mortgage of a specified number of articles out of a larger number will not be good against creditors of the mortgagor and others acquiring adverse rights, unless it furnishes the data for separating the mortgaged part from the mass. *Dodds v. Neel*, 41—70. But as between the parties to the mortgage, see *Garley v. Davis*, 39—394.

A mortgage of a part of a particular tract of land specifying the quantity, but not the particular part con-

in which the mortgagor resides. *Rev. Stat., chap. 101, sec. 1, as amended by act March 1, 1877.*

SEC. 4743. Every mortgage, whether for real or personal property, shall be a lien on the mortgaged property from the time the same is filed (b) in the recorder's office for record, and not before; which filing shall be notice to all persons of the existence of such mortgage.

SEC. 4744. It shall be the duty of the recorder to indorse on every mort-

veyed, nor referring to any matter or thing by which it can be designated, is void for uncertainty. *Freed v. Brown*, 41—495.

The lien of a mortgage is a legal lien—a right in the land—and may outlive the debt it secures, and be enforced in rem after the debt is barred by the statute of limitations. *Waddell v. Carlock*, 1b., 523.

As to remedy of mortgagee after death of mortgagor, see *Rogers v. Stevenson*, 42—555. As to mortgagee's liability for rents on improvements made by himself, see *Jones v. Fletcher*, 1b., 422.

A mortgagor can not annex the mortgaged land to a city to injury of mortgagee. *Moore v. City of Little Rock*, 1b., 66.

In foreclosing a mortgage against the heir of the mortgagor, it is error to render a personal decree against him for the debt. *Harbison v. Vaughn*, 1b., 539.

Wherever at the time of a sale the vendor is indebted to the purchaser, and so continues after the sale, with a right to call for a reconveyance upon payment of the debt, the transaction will be treated in equity as a mortgage, but the evidence must be clear. *Harman v. May*, 40—146.

A mortgage of merchandise retained by the mortgagor, with power to sell in the ordinary course of business, is void as to third persons. *Lund v. Fletcher*, 39—325; *Martin v. Ogden*, 41—186. An instrument reserving to the grantor the right of "redeeming" will be a mortgage if intended to secure a debt; otherwise it will be deemed a conditional sale. It will be construed in accordance with the intention of the parties. *Striker v. Hershey*, 38—264. A mortgage of lands can not, by parol agreement, be made to cover any other debt or any larger amount than that expressed in it. *Hughes v. Johnson*, 38—285; *Johnson v. Anderson*, 30—745. When it is doubtful whether an instrument is a mortgage or a conditional sale, it will be construed to be a mortgage. *Gibson v. Martin*, 38—207. A mortgagee in possession is bound to account for rents. *Greer v. Turner*, 36—17. Not only vested remainders, but contingent interests, may be mortgaged. *Oliphint v. Eckerly*, 36—69. The renewal of the mortgage note is not payment, and as between the parties will not extinguish the mortgage. 1b. Mortgages of property to be acquired in future will be upheld in equity. *L. R. & F. S. Ry. Co. v. Page*, 35—304; *Apperson v. Moore*, 30—56. *Bona fide* mortgages for future advances are good. *Brewster v. Clumft*, 33—72. A payment or tender of the debt discharges the mortgage lien. *Schearff v. Dodge*, 33—340. A mortgage to secure indefinite future advances is valid as against third parties. *Jarrett v. McDaniel*, 32—598. An absolute bill of sale given to secure a debt will be construed as a mortgage, and will be postponed to a subsequent recorded mortgage. *Rogers v. Vaughan*, 31—62. It requires clear evidence to show that a bill of sale was intended as a mortgage. *Triebler v. Andrews*, 31—163. A deed of trust made to secure a debt is in legal effect a mortgage. *Turner v. Watkins*, 31—429. A mortgage may be foreclosed for the payment of the interest before the maturity of the principal. *Silhoell v. Adams*, 29—346.

(b) A mortgage is good between the parties, though not acknowledged and recorded, but it constitutes no lien upon the mortgaged property as against strangers, unless it is acknowledged and recorded, even though they may have actual notice of its existence. *Main v. Alexander*, 9—112; *Jacoway v. Gault*, 20—190; *Hannah v. Carrington*, 18—105.

The clerk and recorder before whom a mortgage was acknowledged under a power of attorney, and to whom it was exhibited when the acknowledgment was made, but not filed for record with the mortgage, is no more affected with notice of the mortgage than a stranger would be; actual notice of an unregistered mortgage is insufficient. *Carnall v. Duval*, 22—136.

The substantial act to be done by a mortgagee to secure his full rights under our registry laws is to cause his mortgage to be placed on file for record in the office where such instruments are to be recorded, and pay the fee allowed by law for recording the same. See SECS. 3244, 3378, 5562. The filing of a paper does not consist of the marking put on it by the clerk, but in placing it as a record in the office or case where it belongs; and the failure of the recorder to note the filing and spread the mortgage upon the record can not operate to the prejudice of the mortgagee, who has left his mortgage with the clerk for record. If subsequent purchasers are misled by the neglect of the clerk to note the filing on the record, as required by section 4744, and record the mortgage, their remedy is against the clerk, who, together with his securities, are liable on his official bond for such neglect. Leaving a mortgage, and paying the fees for recording the same, in the recorder's office, with a person in charge of the office for the time being, though not a legal deputy, is a sufficient filing to protect and secure the rights of the mortgagee. *Oate v. Walls*, 28—244.

An unrecorded mortgage, or one which, from being defectively acknowledged, is not entitled to record, is not binding upon a third person, though such third person have actual notice of its existence. *Dodd v. Parker*, 40—536; *Fry v. Martin*, 33—203.

A mortgage filed with directions not to record it constitutes no lien unless it is filed in accordance with section 4750. *Bowen v. Fussell*, 37—307. Between conflicting mortgages the one first filed will have precedence. *Mitchell v. Badgett*, 33—387. The recording of a subsequent mortgage is no notice to a prior mortgagee. *Birnie v. Main*, 29—591.

A defective acknowledgment of a mortgage can not be taken advantage of by one acquiring the mortgaged property without value. *Moore v. City of Little Rock*, 42—66.

gage filed in his office for record, and note in the record, the precise time such mortgage was filed for record.

ACKNOWLEDGMENT OF SATISFACTION.

SEC. 4745. If any mortgagee, his executor, administrator or assignee, shall receive full satisfaction for the amount due on any mortgage, he shall, at the request of the person making satisfaction, acknowledge satisfaction thereof on the margin of the record in which such mortgage is recorded.

SEC. 4746. If any person thus receiving satisfaction do not, within sixty days after being requested, acknowledge satisfaction as aforesaid, he shall forfeit to the party aggrieved any sum not exceeding the amount of the mortgage money, to be recovered by civil action in any court of competent jurisdiction.

SEC. 4747. Such acknowledgment of satisfaction, made as aforesaid, shall have the effect to release the mortgage and bar all actions brought thereon, and revest in the mortgagor, or his legal representatives, all title to the mortgaged property.

ACKNOWLEDGMENT OF SATISFACTION BY OFFICER.

SEC. 4748. If mortgaged property be redeemed by payment to the officer before the sale, such officer shall make a certificate thereof, and acknowledge the same before some officer authorized to take acknowledgment of deeds for lands, and such certificate shall be recorded in the office in which the mortgage is recorded, and shall have the same effect as satisfaction entered on the margin of the record. *Rev. Stat., chap. 101.*

MORTGAGES ON FUTURE CROPS.

SEC. 4749. All mortgages executed on crops already planted, or to be planted, shall have the same force and effect to bind such crops and their products as other mortgages now have to bind property already in being (c). *Act Feb. 11, 1875.*

FILING WITHOUT RECORDING.

SEC. 4750. Whenever any mortgage or conveyance, intended to operate as a mortgage of personal property, or any deed of trust upon personal property, shall be filed with any recorder in this state upon which is indorsed the following words: "*This instrument is to be filed but not recorded,*" and which indorsement is signed by the mortgagee, his agent or attorney, the said instrument, when so received, shall be marked "filed" by the recorder, with the time of filing, upon the back of such instrument; and he shall file the same in his office, and it shall be a lien on the property therein described from the time of filing, and the same shall be kept there for the inspection of all persons inter-

(c) The landlord's lien is superior to a crop mortgage. *Buck v. Lee*, 36—525; *Tomlinson v. Greenfield*, 31—557. Under this section the mortgage is valid at law, and replevin can be maintained for the property. *Jarrett v. McDaniel*, 32—598.

After the assignment of a rent note, payable in cotton, the assignor has no interest in the cotton which he can mortgage. *Hamilton v. Duty*, 41—414.

ested; and said instrument shall be thenceforth notice to all the world of the contents thereof without further record, except as hereinafter provided (d).

SEC. 4751. Every mortgage so indorsed and filed shall be void as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year after the filing thereof, unless within thirty days next preceding the expiration of one year from such filing, and each year thereafter, the mortgagee, his agent or attorney, shall make an affidavit exhibiting the interest of the mortgagee at the time last aforesaid claimed by virtue of such mortgage, and, if said mortgage is to secure the payment of money, the amount yet due and unpaid; such affidavit shall be attached to and filed with the instrument or copy on file to which it relates (e).

SEC. 4752. A copy of any such original instrument, so indorsed and filed as aforesaid, including any affidavit made in pursuance of this act, certified by the recorder, in whose office the same shall have been filed, shall be received in evidence in all suits or proceedings to which it may be applicable; and if, in any suit or proceeding, the execution of said instrument, or its genuineness, shall be questioned in such manner as to render the production of the original necessary, the same may be produced by the recorder of the county, in obedience to a subpoena *duces tecum* or other proper process.

SEC. 4753. The recorder of deeds shall keep a book in which shall be entered a minute of mortgages and trust deeds of personal property, and affidavits filed under this act. Said book shall be ruled off into separate columns, with heads as follows: "Time of Reception," "Name of Mortgagor," "Name of Mortgagee," "Date of Instrument," "Amount Secured," "When Due," "Property Mortgaged" and "Remarks." Under the head of "Property Mortgaged" it shall be sufficient to enter a general description of the property and the particular place where located. The date of filing any affidavit, and the amount sworn to be due and unpaid, shall be entered under the head of "Remarks." An index to said book shall be kept in the manner as required for other records.

SEC. 4754. In the absence of stipulations to the contrary, the mortgagee of personal property shall have the legal title thereto and the right of possession.

SEC. 4755. When any mortgage or trust deed of personal property shall have been fully paid off or satisfied, it shall be the duty of the mortgagee or beneficiary, his assignee or personal representative, to enter satisfaction, or cause satisfaction thereof to be entered of record, under the head of "Remarks," under the same penalty for neglect or refusal as provided in case of the satisfaction of mortgages of real estate and other recorded mortgages.

SEC. 4756. Recorders of deeds shall be entitled to receive the following fees for services under the provisions of this act: For filing each instrument or copy and entering the same upon the record herein provided for, twenty-five cents; for filing each affidavit of mortgage, and writing the same upon record, ten cents; for copies of such instruments, copies or affidavits, such fees as are now

(d) The indorsement, "To be filed but not recorded," is a sufficient compliance with this provision. *State v. Smith*, 40—431.

(e) Unless this provision is complied with, the mortgage becomes void at the expiration of a year. *McKennon v. May*, 39—442.

allowed by law to clerks of the circuit court for copies of papers on file in their offices.

This act shall not be so construed as to apply to any instrument which shall not be indorsed by the mortgagee as aforesaid. *Act March 10, 1877.*

SEC. 4757. All trust deeds or mortgages of personal property, filed in any recorder's office in any county in this state, upon which is indorsed, "This instrument is to be filed but not recorded," may be withdrawn by the mortgagee if such mortgage be canceled or satisfied, and the recorder shall make a minute of such withdrawal, cancellation or satisfaction on the book required to be kept to enter such mortgages or trust deeds under the head of "Remarks."

SEC. 4758. In all cases where such mortgages or trust deeds have been canceled or satisfied, the recorder may allow such instrument to be withdrawn from the files of his office by either the mortgagee or mortgagor. *Act Feb. 28, 1883.*

SALES UNDER MORTGAGES, ETC.

SEC. 4759. At all sales of personal or real property under mortgages and deeds of trust in this state, such property shall not sell for less than two-thirds of the appraised value thereof. *Provided*, that if the property shall not sell at first offering for two-thirds of the amount of the appraisement, then, in case of personal property, another offering may be made sixty days thereafter, and, in case of real property, another offering may be made in twelve months thereafter, at which offering the sale shall be to the highest bidder without reference to the appraisement; and, *provided*, that real property sold thereunder may be redeemed by the mortgagor at any time within one year from the sale thereof by payment of the amount for which said property is sold, together with ten per cent. interest thereon and cost of sale (f). *Act March 17, 1879, sec. 1, as amended by act March 17, 1883.*

SEC. 4760. When such sales are to be made, the mortgagee, trustee or other person authorized to make the same shall, before the day fixed therefor, apply to the nearest justice of the peace of the township in which such sale is to be made, or, if there be no justice in said township, then to the nearest justice of an adjoining township, for the appointment of appraisers; and such justice shall thereupon appoint three disinterested householders of the county, who shall take and subscribe an oath before such justice that they will well and truly view and appraise the property that may be shown them.

SEC. 4761. Such appraisers shall proceed to view and appraise such property, and they, or any two of them, shall make a report of their appraisement in writing, which report shall be attached to the oaths taken as aforesaid, and shall be delivered to the person making the sale, and held by him subject to inspection by all parties interested.

SEC. 4762. For their services, the appraisers shall receive one dollar each, to be paid from the proceeds of the sale of the property. *Act March 17, 1879, sec. 2.*

(f) If the mortgagor files a bill to redeem from a sale not made in accordance with this section, he waives the irregularities, unless he assails them in his bill. *Daily v. Abbott*, 40—275. A mortgagor is entitled to redeem by payment of the debt and ten per cent., and, if the purchaser takes possession before the expiration of the period for redemption, is entitled to receive from the purchaser the rents. *Ib.* This act is unconstitutional as to mortgages executed prior to its passage. *Robards v. Brown*, 40—423.

SEC. 4763. The mortgagor or grantor in any mortgage or deed of trust, where the sole consideration of the mortgage or deed of trust is money loaned to the mortgagor, shall, if he so desire, have the right to waive any or all rights of appraisement, sale or redemption provided for in this act, by a clause in said mortgage or deed of trust to that effect. *Ib.*, sec. 1, as amended by act March 17, 1883.

CHAPTER CXI.

NOTARIES PUBLIC.

SECTION

4764. Appointment; bond; term of office, etc.

4765. Power to administer oaths.

4766. Other powers.

4767. To keep a record and certify copies.

SECTION

4768. If any die, etc., record and papers to be delivered to clerk.

4769. To have a seal.

4770. Faith to be given to their acts.

SECTION 4764. The governor may appoint a convenient number of notaries public for each county, who shall be citizens of the county for which they are appointed, and who shall file in the office of the recorder of deeds for the county a bond to the state, for the faithful discharge of their duties, in the sum of one thousand dollars, with security to be approved by the clerk of the circuit court of the county, and who shall hold office for the term of four years. *Act Dec. 16, 1874.*

SEC. 4765. Each notary public shall have power to administer oaths in all matters incident to or belonging to the exercise of his notarial office.

SEC. 4766. He may take the proof or the acknowledgment of all instruments of writing relating to commerce and navigation, receive and authenticate acknowledgments of deeds, letters of attorney, and other instruments of writing (a), make declarations and protests, and certify under his official seal the truth of all matters and things done by virtue of his office.

SEC. 4767. Each notary shall keep a fair record of all his official acts in a book to be by him kept for that purpose, and, when required, shall give a certified copy of any record in his office to any person applying therefor, on the payment of the fees thereon.

SEC. 4768. If any notary die, resign or remove from the county, or be removed from office, his record book and all his public papers shall be delivered to the county clerk, to be delivered to his successor.

SEC. 4769. Every notary shall provide a seal of his office, which shall be engraved so as to present by its impression the emblems and devices (*) presented by the great seal of state, surrounded by the words "Notary Public, County of —, Ark.," and he shall authenticate all his official acts therewith, and until an official seal shall be procured each notary may use his private seal, which shall be of the same force and effect as a public seal.

(a) He may also take depositions and affidavits. SECS. 2918, 2926.

(*) The absence from a notary's seal of the emblems and devices required by the statute does not invalidate his certificate of the acknowledgment of a deed. *Sonfield v. Thompson*, 42-46.

SEC. 4770. All declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated (b). *Rev. Stat., chap. 104, secs. 3 to 9, and act May 3, 1864, sec. 3.*

CHAPTER CXII.

OFFICIAL BONDS.

SECTION

4771. Bonds of county and township officers to be approved by circuit court; provisional approval by judges.
4772. On confirmation of approval, bond, etc., to be filed with recorder; proceedings when confirmation refused.
4773. Objection may be made in circuit court to sufficiency of bond; issue to be tried by court.
4774. Order when bond is found insufficient.
4775. Affidavit of sureties must be made before jurisdiction can be acquired.

SECTION

4776. When and how order requiring new bond may be obtained.
4777. Proceedings on petition for such order.
4778. Office vacated by failure to give new bond when ordered.
4779. When petition is through malice, attorney's fee taxed against petitioner; such fee awarded petitioner on just complaint.
4780. Vacancies caused by failure to give bond, how filled.

SECTION 4771. The official bonds of county and township officers, except collectors' bonds (*), shall be approved by the circuit court (†). *Provided, however,* that the judge of the circuit court or the judge of the county court in vacation, subject to confirmation or rejection by the circuit court, may approve the bonds of such officers in vacation upon the securities in such bonds subscribing to an oath that they are worth the amount of the bond in property in the county where such officer resides, subject to execution, over and above all their debts, liabilities and exemptions under existing laws, stating therein the amount of real estate and value, and the amount of personal property and its value; and, *provided, further,* that if there should be more than one security, if the aggregate value of their property should be over and above the aggregate of their debts, liabilities and exemptions and the amount of the bond required by law, the bond may be approved (a).

SEC. 4772. If the circuit court should confirm the approval of the bond, the bond and affidavits shall be filed and recorded in the recorder's office in a book provided for that purpose; but if the court shall refuse to confirm the approval of the bond, it shall order a good and sufficient bond to be given in

(b) And his certificate is evidence of notice to indorsers and others. SECS. 2831, 2832. *Peters v. Hobbs*, 26—67.

(*) See SEC. 5717.

(†) This act is constitutional. *Oliver v. Martin*, 36—134. For construction, see opinion of the court.

(a) The sureties upon the official bonds of all county officers shall reside within the counties where such officers reside, and shall have sufficient property therein not exempt from sale under execution, attachment or other process of any court to make good their bonds. *Art. XIX, sec. 21, Const.*

A married woman can not bind herself as surety on an official bond. *Hyner v. Dickinson*, 32—776. The signing of such bond by additional sureties after it has been filed is not warranted by law. *Id.* It is not necessary to the validity of a bond that the names of the sureties appear in the body of it. *Hodkin v. Holland*, 34—203.

fifteen days from its rejection, and, if a new bond is not given in that time, the office shall be deemed vacant, and shall be filled in the manner now provided by law (b).

SEC. 4773. Any citizen and tax-payer of the county may appear in the circuit court and file objection to the sufficiency of any official bond that may be given by any county or township officer, as required by this act, showing that the securities have not the amount of property in the county subject to execution or other final process to make the bond good, and, if the objection be sworn to, the burden of proof shall be on the officer to show that the securities in the bond are sufficient, and the issue shall be tried by the court after hearing the evidence adduced on the trial.

SEC. 4774. If, on the trial, the bond shall be found insufficient, the court shall order a new bond to be given in the time and in the manner prescribed in sections 4771 and 4772, and, upon the failure of such officer to give such new bond within the time prescribed, the office shall be deemed vacant.

SEC. 4775. Before the judge of the county court, judge of the circuit court or the circuit court can acquire any jurisdiction over county and township officers' bonds, the affidavit must be made by the sureties in the bond, as provided in section 4771 (c).

WHEN NEW BOND MAY BE ORDERED.

SEC. 4776. At any time should the securities in any official bond become insufficient by death, removal from the county, or from any other cause, any citizen and tax-payer in the county may present his petition to the circuit court of the county, setting forth the facts, first giving such officer reasonable notice of not less than one day, and giving bond for the cost of the proceeding, conditioned that he will pay all costs if he fails to establish the facts set up in his petition.

SEC. 4777. The court shall hear and determine the matter, and if, on a trial, the bond and securities be found insufficient, the court shall order the officer to give an additional bond within fifteen days, and pay the costs of the proceedings, but if the bond of the officer in a trial should be found sufficient, the petitioner shall pay the cost.

SEC. 4778. Should any officer fail, neglect or refuse to give an additional bond within fifteen days after the court has passed upon the insufficiency thereof, as provided in the preceding section, his office shall be deemed vacant, and filled according to existing laws.

SEC. 4779. Upon the trial of the sufficiency or insufficiency of the officer's bond, if the court should find that the petition of the citizen and tax-payer was presented through malice, or without probable cause, in addition to other

(b) The order of the court rejecting a bond is final and subject to appeal. *Lowman, ex parte*, 42—370.

(c) When a bond is presented to the county judge in vacation, he should see that the affidavits are such as the statute requires. *Hymer v. Dickinson*, 32—776. If they are insufficient, but it otherwise appears that the bond is sufficient, the circuit court should not reject it, but should require affidavits meeting the requirements of the statute to be filed. *Ib.* The affidavits need not give a description of the property of sureties, but only its amount and value. *Hodkin v. Holland*, 34—200. That some of them are not made until after the bond is approved by the county judge and filed in the clerk's office is no reason that the circuit court should not approve it. *Ib.*

costs, an attorney's fee, not exceeding fifty dollars, shall be taxed as costs against the petitioner (†). If, however, the court should find the bond insufficient, the petitioner shall be entitled to receive an attorney's fee, to be taxed as cost to the county, in any case not exceeding fifty dollars.

SEC. 4780. Should a vacancy occur by reason of any county or township officer failing to give bond as required by this act, the clerk of the county shall immediately notify the governor of such vacancy, and should he fail, neglect or refuse to do so, he shall be guilty of non-feasance in office, and be punished accordingly. *Act March 1, 1875.*

CHAPTER CXIII.

OFFICIAL OATHS.

SECTION

OATH, FORM OF.

4781. Senators, representatives and all state and county officers to take official oath; form of.
4782. To take expurgatory oath in relation to dueling.

SECTION

WHO MAY ADMINISTER.

4783. What officers may administer official oaths.
4784. Duty of officer administering oath.

OATH, FORM OF.

SECTION 4781. Senators and representatives, and all judicial and executive state and county officers, and all other officers, both civil and military, before entering on the duties of their respective offices, shall take and subscribe to the following oath or affirmation: "I, ———, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the State of Arkansas, and that I will faithfully discharge the duties of the office of ———, upon which I am now about to enter." *Art. XIX, sec. 20, Const.*

SEC. 4782. In addition to the oath of office required in the preceding section, each civil and military officer shall, before he enters on the duties of his office, take an oath that he has not, either directly or indirectly, been engaged or in any matter concerned in any duel, or given or been the bearer of any challenge to fight a duel in this state since the first day of January, one thousand eight hundred and thirty-eight (a). *Rev. Stat., chap. 106, sec. 3.*

WHO MAY ADMINISTER.

SEC. 4783. The governor shall take the oath of office before one of the judges of the supreme or circuit court, county clerk or clerk of the circuit court; and the judges of the supreme court and judges of the circuit courts, secretary of state, state treasurer and auditor of state, before the governor or

(†) See *Fry v. Chicot County*, 37—117.

(a) See *art. XIX, sec. 2, Const.*

either of the judges of the supreme or circuit court, clerk of the county court or clerk of the circuit court; and all other officers, both civil and military, before any judge, clerk of the county court, clerk of the circuit court or justice of the peace of this state. *Rev. Stat., chap. 106, sec. 1, and act Jan. 7, 1845.*

SEC. 4784. It shall be the duty of every officer administering the oath of office to any officer of this state to indorse such oath on the commission of such officer. *Rev. Stat., chap. 106, sec. 4.*

CHAPTER CXIV.

OFFICIAL STATEMENTS.

SECTION

4785. To be filed with governor by treasurer of state, secretary of state and commissioner of state lands; what to embrace.

4786. Auditor to file with governor statement showing charges to fiscal officers, disbursements, etc.

SECTION

4787. Such reports to remain in hands of governor as public records.

4788. When deficit occurs governor to order investigation.

SECTION 4785. Hereafter, on the first days of January, March, July and October, it shall be the duty of the treasurer of state, the secretary of state and the commissioner of state lands to file with the governor a sworn statement, in tabulated form, showing:

First. The balances that they were chargeable with on account of the several funds.

Second. All amounts received or earned (a) by them during the quarter last past, and the several funds on account of which the same have been received; and,

Third. . An itemized statement of all expenditures and disbursements made by them, and on what account the same have been made during such quarter.

SEC. 4786. It shall be the duty of the auditor of state, on the first days of January, March, July and October, to file with the governor a report and statement showing the different amounts of money which, during the preceding quarter, have been charged upon his books to the various fiscal officers of the state, what disbursements or settlements during said quarter have been made by him, and in what manner the same have been made.

SEC. 4787. Said reports, when so filed with the governor, shall remain in his hands as public records, subject to inspection upon proper application, and copies of the same shall be embraced in or accompany his message to the general assembly.

SEC. 4788. Whenever a deficit occurs in said reports it shall be the governor's duty to order through the attorney-general an immediate investigation, and, if necessary, suit to be brought against the party whose report shows such deficit. *Act March 30, 1883.*

(a) See SECS. 3209-3211.

CHAPTER CXV.

PARTITION AND SALE OF LANDS.

SECTION

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PROCEEDINGS WHERE LANDS ARE NOT SUSCEPTIBLE OF DIVISION.

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SECTION

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WHEN PARTITION AND SALE NOT TO BE MADE.

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APPOINTMENT OF GUARDIAN, BOND, ETC.

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SALE OF LAND HELD IN TRUST, ETC.

4819. Lands held by joint tenants, etc., may be sold, when and how.
 4820. When sale thereof not to be deemed in contravention of will.
 4821. Proceedings when legal title is held by trustee.

SECTION 4789. Where lands, tenements or hereditaments shall be held in joint tenancy, tenancy in common, or in coparcenary, however derived or acquired, and whether in fee for years or for life, any one or more of the persons interested may present to the circuit court a petition praying for a division and partition of such premises according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition can not be made without great prejudice to the owners (a). *Rev. Stat., chap. 107, secs. 1 and 32.*

Sec. 4790. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth and make exhibits of the rights and titles of all parties interested therein, so far as the same are known to the petitioner, including tenants for years, for life, by courtesy, or in dower, and of persons entitled to the reversion, remainder or inheritance, and of every person who, upon any contingency, may be or become entitled to any beneficial interest in the premises; and such petition shall be verified by affidavit.

(a) The statutory regulations for partition of land do not take away the original jurisdiction of chancery. *Patton v. Wagner*, 19—233.

Partition can not be had of lands held adversely, or the title to which is in dispute, unless the lands be vacant and not in actual possession. Where the co-tenant has been ousted, or his rights totally denied by his co-tenant, his remedy is by ejectment, in which he may recover his just proportion of the land, and also of the rents and profits. *London v. Overby*, 40—135, and cases there cited.

As to partition to indemnify co-tenant for improvements, see *Drennea v. Walker*, 21—540.

Expenses incurred as to land owned jointly by partners should be settled in a proceeding for partition, and not on bill to settle partnership accounts. *Jones v. Jones*, 23—212.

SEC. 4791. Every person having such interest as is specified in this act, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, shall be made a party to such petition.

SEC. 4792. In cases where one or more of such parties, or the share or quantity of interest of any of the parties, is unknown to the petitioner, or uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties can not be named, the same shall be so stated in the petition. *Ib.*, *secs.* 2-4.

SEC. 4793. Any person having an interest in the premises not made a party in the petition may appear, and, on showing his interest by affidavit, be made a party. *Ib.*, *sec.* 9.

SEC. 4794. If a party duly notified by personal service, or constructively summoned, shall not appear and answer within the time allowed, a default shall be entered; but the petitioner shall, nevertheless, make out his case by exhibiting to the court the evidence of his title. *Ib.*, *sec.* 13.

SEC. 4795. The court shall ascertain, from the evidence, in case of default, or from the confession by answer of the parties, if they appear, or from the verdict by which any issue of fact shall be determined, and shall declare the rights, titles and interests of all the parties to such proceedings, petitioners as well as defendants, so far as the same shall have appeared, and shall determine the rights of the parties in such lands and tenements, and give judgment that partition be made between such of them as shall have any right therein, in accordance with such right thus ascertained.

SEC. 4796. If neither party require a jury, any fact arising under this act may be referred to the court, and the decision of the court shall have the same effect as the verdict of a jury.

SEC. 4797. Whenever any judgment of partition shall be rendered, the court shall, by rule or order, appoint not less than three nor more than five commissioners (b), residents of the county in which the premises to be divided shall be situate, to make the partition so adjudged, according to the respective rights and interests of the parties, as the same were ascertained and determined by the court; and, on such rule or order, the court shall designate the part or shares which shall remain undivided, if any, for the owners whose interest shall be unknown and not ascertained.

SEC. 4798. The commissioners shall forthwith proceed to make partition, according to the judgment of the court, unless it shall appear to them, or a majority of them, that partition of the premises can not be made without great prejudice to the owners, in which case they shall make report of such fact in court, under their hands, accompanied by an affidavit of the truth of the fact stated in such report so returned.

SEC. 4799. In making partition, the commissioners shall divide the lands and tenements, and allot the several portions and shares thereof to the respective parties, quality and quantity relatively being considered by them, according to the respective rights and interests of the parties, so adjudged by the court, designating the several shares and portions by metes and bounds, and may, when necessary, employ a surveyor and assistants to assist them therein.

(b) See *Larris v. Preston*, 10—201.

SEC. 4800. The commissioners shall make a full and detailed report of their proceedings, in writing, signed by them, or a majority of them, specifying therein the manner of executing the trust, and describing the lands divided, and the shares allotted to each party, with the quantity of each share, the boundaries, courses and distances, together with such other facts as may be necessary for a complete elucidation of such division; which report shall be accompanied by the affidavits of such commissioners as may sign such report, verifying the facts set forth therein.

SEC. 4801. Upon good cause shown by either party, on the report being made and returned to the circuit court, it may be set aside by the court, who may appoint new commissioners, who shall proceed in like manner as herein-before directed; but the court shall not set aside a second report for the same cause for which the first report was set aside.

SEC. 4802. If no such cause be shown, the report shall be confirmed, and judgment shall thereupon be given, that such partition be firm and effectual forever, and such judgment shall be binding and conclusive on all the parties to the proceedings, and their representatives, and all other persons claiming under them by right derived after the commencement of the proceedings. *Ib.*, *secs.* 14-21.

SEC. 4803. A copy of such report, if confirmed, and of the judgment, duly certified to by the clerk of the court, shall be recorded in the office of the recorder of the county in which the estate divided is situate. *Ib.*, *sec.* 22.

PROCEEDINGS WHERE LANDS ARE NOT SUSCEPTIBLE OF DIVISION.

SEC. 4804. If the commissioners shall report to the court that the land or tenements of which partition had been directed are so situated, or that any lot or portion thereof is so situated, that partition thereof can not be made without great prejudice to the owners thereof, the court may, if satisfied that such report is just and correct, make an order that the commissioners sell the premises so situated, at public auction, to the highest bidder. *Ib.*, *sec.* 23.

SEC. 4805. The court making such order of sale shall therein direct the terms and conditions, time and place of sale, the credit, if any, and the security to be taken.

SEC. 4806. The commissioners shall give notice of the time and place and terms of any sale to be made by them, in accordance with the order of the court directing such sale.

SEC. 4807. If the premises consist of distinct farms, buildings, tracts or lots of land, they shall be sold separately, or where any tract of land or lot can be divided for the purpose of sale, with advantage to the parties interested, it may be so divided and sold in parcels.

SEC. 4808. No commissioner, nor any person for his benefit, shall purchase or be directly or indirectly interested in the purchase of any of the premises sold, nor shall any guardian of any minor or person of unsound mind, party to the proceedings, purchase or be interested in the purchase of any of the lands, the subject of the proceedings, except for the benefit or in behalf of the ward; and all sales contrary to the provisions of this section shall be void.

SEC. 4809. After completing such sale, the commissioners shall report their proceedings to the court, on their oath, with a description of the different

parcels of the land sold, the name of each purchaser, and the price bid by him, which report shall be filed in the court.

SEC. 4810. If such sale be approved and confirmed by the court, an order shall be entered directing the commissioners, or a majority of them, to execute conveyances pursuant to such sale, and the commissioners shall execute such conveyances accordingly.

SEC. 4811. The conveyances so executed shall be acknowledged or proven, and recorded in the same manner as other conveyances of lands, and shall be a bar, both in law and equity, against all persons interested in such premises, and who shall have been parties to the proceedings, and against all other persons claiming from or under such parties, or either of them, by title derived after suit commenced.

SEC. 4812. The proceeds of every such sale, after deducting the costs and expenses of the proceedings, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises, and shall be paid to them, their guardians or legal representatives, by the commissioners. *Ib.*, *secs.* 24-31.

WHEN PARTITION AND SALE NOT TO BE MADE.

SEC. 4813. No partition nor sale of land, tenements or hereditaments devised by any last will and testament shall be made, under the provisions of this act, contrary to the intention of any such testator, expressed in such last will and testament (c). *Ib.*, *sec.* 34.

APPOINTMENT OF GUARDIAN—BOND, ETC.

SEC. 4814. The guardians of all minors and persons of unsound mind, appointed according to law, shall be, and are, hereby authorized, in behalf of their respective wards, to do and perform any matter or thing respecting the division of any land or tenements, as herein directed, which shall be binding on any such ward, and deemed as valid to every purpose as if the same had been done by such ward after his disabilities were removed.

SEC. 4815. The court, for any of the purposes intended by this act, and before or after any proceedings by virtue thereof, may appoint a guardian for any minor, whether such minor resides in or out of this state, and such guardian, for all the purposes of this act, shall have the same powers as any general guardian.

SEC. 4816. The court appointing a guardian for any minor entitled to any moneys arising from the sale aforesaid shall require of such guardian a bond to the state, with such security as the court shall deem sufficient, conditioned for the faithful discharge of the duty or trust committed to him, and that he will render a just and true account of such guardianship in all courts and places when thereto required.

SEC. 4817. In case of death, resignation, neglect or refusal to act of any of the commissioners to be appointed as aforesaid, before the duties, trust and services hereby required of them shall be completed, the court, or judge thereof

(c) See SEC. 4820.

in vacation, may appoint another commissioner, who shall be vested with the like powers and authority as if he had been originally appointed. *Ib.*, *secs.* 34-38.

SEC. 4818. The costs of the division shall be apportioned among the parties in the ratio of their interests, and the costs arising from any contest of fact or law shall be paid by the party adjudged to be in the wrong. *Civil Code*, *sec.* 547.

SALE OF LAND HELD IN TRUST FOR COPARCENERS, ETC., SOME OF WHOM ARE INFANTS, ETC.

SEC. 4819. Where town or city lots, or land outside of a town or city, but having upon it a building of more value than the land, shall be held by or in trust for coparceners, joint tenants, or tenants in common, some of whom are infants or persons of unsound mind, the circuit court, or other court of similar jurisdiction, may, upon the complaint of a part of such owners against the others, or of the trustee against such owners, or of the owners against the trustee, and upon its being proved that a division of such land would materially impair its value, order a sale thereof and the division of the proceeds among those entitled. Before such sale is ordered, the court shall appoint some suitable persons to take care of the interests of the infants or persons of unsound mind; and the shares of such infants or persons of unsound mind shall not be paid by the purchaser, but remain a lien upon the land, bearing interest, until they become capable in law of receiving their respective shares, or until statutory guardians shall be appointed for such infants or persons of unsound mind, or the infants shall become married, and such guardians or husbands shall give bond as required by law.

SEC. 4820. The sale of land of infants, persons of unsound mind or married women shall not be deemed to be prohibited as being in contravention of the deed, will or contract under which they hold, unless a sale is expressly forbidden by such deed, will or contract (d).

SEC. 4821. When the legal title of land is held by a trustee, he shall be a party to the proceedings for its sale, and in all other respects the proceedings for the sale of land held in trust for infants, married women and persons of unsound mind shall be the same as where they hold the legal title, except that the trustees shall give bond and security, instead of the guardian or husband, where the proceeds of sale are to go into the hands of such trustee. *Civil Code*, *secs.* 535-537.

(d) See SEC. 4813.

CHAPTER CXVI.

PARTNERSHIPS—LIMITED.

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SECTION 4822. Limited partnerships for the transaction of mercantile, mechanical or manufacturing business within this state may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking.

SEC. 4823. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law, and one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital.

SEC. 4824. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same.

SEC. 4825. The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

First. The name of the firm under which such partnership is to be conducted.

Second. The general nature of the business to be transacted.

Third. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

Fourth. The amount of capital which each special partner shall have contributed to the common stock.

Fifth. The period at which the partnership is to commence, and the period at which it will terminate.

SEC. 4826. The certificate shall be acknowledged by the persons signing the same before some judge or justice of the peace of this state, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of conveyances of land.

SEC. 4827. The certificate so acknowledged and certified shall be filed in the office of the clerk of the circuit court of the county in which the principal place of business of the partnership shall be situated, and shall be recorded by him at large in a book to be kept by him for that purpose, which shall be open to public inspection.

SEC. 4828. If the partnership shall have places of business situated in different counties, a copy of the certificate and acknowledgment, duly certified by the clerk in whose office the same shall be filed, under his official seal, shall be filed and recorded in the office of the clerk of the circuit court of every such county.

SEC. 4829. At the time of filing the original certificate and the acknowledgment, as before directed, an affidavit of one of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash.

SEC. 4830. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed, as before directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

SEC. 4831. The partners shall publish the terms of the partnership when recorded, for at least six weeks immediately after the same shall be recorded, in some newspaper printed in this state, to be designated by the clerk of the circuit court in which such record shall be made (*), and if such publication be not made, the partnership shall be deemed general.

SEC. 4832. The affidavit of the publication of the terms of such partnership, by the printer of the newspaper in which the same may be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

SEC. 4833. Every renewal and continuance of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

SEC. 4834. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on, after any such alteration shall have been made, shall be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the preceding section.

(*) See SECS. 4356-4358.

SEC. 4835. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm with his privity, he shall be deemed a general partner.

SEC. 4836. Suits in relation to the business of the partnership may be brought by and against the general partners, in the same manner as if there were no special partners.

SEC. 4837. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him in the shape of dividends, profits or otherwise at any time during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and, if after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profits.

SEC. 4838. If it shall appear that by the payment of interest or profits to any special partner, the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his capital, with interest.

SEC. 4839. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. If he shall interfere contrary to these provisions, he shall be deemed a general partner.

SEC. 4840. The general partners shall be liable to account to each other, and to the special partners, for their management of the concern, both in law and in equity, as other parties now are by law.

SEC. 4841. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured, to the extent of his damages, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both.

SEC. 4842. Every sale, assignment or transfer of any of the property or effects of such partnership, when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent of giving preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every judgment confessed, lien created or security given by such partnership under like circumstances, and with like intent, shall be void as against the creditors of such partnership.

SEC. 4843. Every such sale, assignment or transfer of any of the property or effects of a general or special partner, made by such general or special partner when insolvent, or in contemplation of insolvency of the partnership, with the intent of giving any creditor of his own or of the partnership a preference over other creditors of the partnership, and every judgment confessed, lien created or security given by any such partner under the like circumstances, and with like intent, shall be void as against the creditors of the partnership.

SEC. 4844. Every special partner who shall violate any of the provisions of the two preceding sections, or shall concur in or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

SEC. 4845. In case of the insolvency of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all other creditors of the partnership shall be satisfied.

SEC. 4846. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the clerk's office in which the original certificate was recorded, and published once in each week, for four weeks, in some newspaper printed in this state (*).

SEC. 4847. It shall also be lawful and competent for all persons wishing to avail themselves of the provisions of this chapter to make advances of capital into such partnerships, not only in cash, but in merchandise and personal or real property; and all such capital so invested shall be first appraised by three disinterested individuals, who shall, upon oath, declare and certify the value of the same; and all such certificates shall become a part of the records of such co-partnership.

SEC. 4848. It shall be lawful, under the provisions of this chapter, for persons to form partnerships for any mercantile or commercial purpose, manufacturing, navigation or insuring, or for the construction of roads, railroads, canals, etc., and to advance such sums as may be deemed by such partnerships or associations necessary, from time to time, for the interest and the advancement of the objects of such partnerships.

SEC. 4849. All sums not paid at the time of forming such partnership shall be secured by mortgage on real estate, and the amounts so secured by each mortgage shall not exceed the fair cash value of the real estate mortgaged.
Rev. Stat., chap. 108.

(*) See SECS. 4356-4358.

CHAPTER CXVII.

PENAL BONDS.

SECTION

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SECTION

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4868. Execution on judgment on official bond, how indorsed; duty of officer.
4869. How money distributed in case of several judgments exceeding the penalty of the bond.
4870. Provisions of this act relating to official bonds to apply to bonds of administrators, etc.

SECTION 4850. In all actions brought upon bonds to which there is a condition or defeasance annexed by which the same is to become void on the payment of a less sum, the defendant in such action may plead payment of the principal sum and interest due by the condition of such bond before the commencement of such action in bar thereof, although the payment was not strictly according to such condition.

Sec. 4851. Whenever any action shall be pending on such bond, the defendant may, at any time before judgment rendered in such action, pay to the plaintiff, or bring into court for the plaintiff's use, the principal sum and interest due on such bond, together with the costs in such action, and thereupon such action shall be discontinued.

Sec. 4852. If judgment be recovered on any such bond, such judgment shall be rendered for the sum of money really due according to such condition, with interest and costs.

Sec. 4853. When an action shall be prosecuted in any court of law upon any bond for the breach of any condition other than for payment of money, or shall be prosecuted for any penal sum for the non-performance of any covenant or written agreement, the jury, if they find that any assignment of such breaches is true, shall assess the damages occasioned by the breach in addition to their finding.

Sec. 4854. If, in such action, the plaintiff shall obtain judgment upon demurrer, by confession or default, the court shall make an order therein that the truth of the breaches assigned be inquired into and the damages sustained thereby assessed at the same or the next term, and the court shall proceed thereon in the same manner as in other cases of inquiry or damages (a).

(a) The jury must be sworn to inquire into the truth of the breaches, as well as to assess the damages. *Phillips & Martin v. The Governor, use, etc.*, 2—382; *Adams et al. v. State, use, etc.*, 6—197. See also *McLain v. Taylor et al.*, 9—358; *Lee v. Leach, Ib.*, 423.

This chapter and the above rulings on the practice under it are retained, though so much of it as relates to matters of practice purely is probably superseded by the code.

SEC. 4855. In every such action, if the plaintiff recover, the verdict assessing the damages shall be entered on the record, and judgment shall be entered for the penalty of the bond, or for the penal sum forfeited, together with costs of suit, and with a further judgment that the plaintiff have execution for the damages so assessed, which damages shall be specified in the judgment.

SEC. 4856. The judgment rendered for the penalty of the bond shall remain as a security for any damages that may be thereafter sustained by the further breach of any condition of such bond, or the non-performance of any other covenant or written agreement by the defendant, the performance of which was secured by such penal sum.

SEC. 4857. Whenever such further breaches shall occur, the plaintiff or his personal representative may have a *scire facias* upon such judgment, suggesting such breaches against the defendant, and all parties bound thereby, and commanding that they be summoned to show cause why an execution should not be had upon such judgment for the amount of damages sustained by such further breaches.

SEC. 4858. The like proceedings to ascertain such damages shall be had upon such writ as hereinbefore provided in the original suit on the bond; and, if the plaintiff recover, judgment shall be rendered that the plaintiff have execution to collect the amount of damages assessed and costs.

SEC. 4859. The execution issued on such judgment shall have like effect and be proceeded on in all things as in the first instance; but the judgment shall remain as a security for further breaches, and so on, as often as occasion may require.

SEC. 4860. Whenever, in any action brought according to the provisions of this act, the jury shall find that any assignment of breaches is not true, the same shall be a bar to any other or further suit by *scire facias*, or otherwise, for the recovery of any damages alleged to have been sustained by occasion of the same breaches so assigned.

SEC. 4861. In actions upon official bonds a judgment for the defendant shall be a bar to any other suit that may be brought on the same official bond, for the use of the same person, for any delinquency or default which was assigned as a breach of the condition of such bond in the action in which such judgment was rendered.

SEC. 4862. Any other party aggrieved may prosecute an action on such official bond, and the pendency of any suit for the use of any other person on the same bond, or a judgment recovered by or against any other person on such bond, shall not abate or in any manner affect such suit or the proceedings therein, except as hereinafter provided.

SEC. 4863. Any person who may have recovered any judgment upon such official bond may, in like manner, again prosecute an action on such bond whenever he may be aggrieved by any default or delinquency other than such as shall have been the subject of a former suit, and shall proceed therein as hereinbefore provided.

SEC. 4864. No *scire facias* shall be brought upon any judgment rendered upon such official bond, by the same or any other relator, for any breach of the condition of the bond.

SEC. 4865. No suit on an official bond shall be barred, nor shall the amount which the plaintiff shall be entitled to recover be affected, by any plea

made by any surety in such bond of a former judgment recovered thereon, unless it be accompanied by an allegation that the sureties, or some of them, have been obliged to pay the damages on such judgment, or some part thereof, for the want of sufficient property of the principal whereon to levy the same, or that they will be obliged to pay the same, or a part thereof, for the same reason; nor unless such plea be verified by oath.

SEC. 4866. If it shall appear that the amount of damages so recovered which a security has been, or will be obliged to pay, as specified in the preceding section, is equal to the amount for which such defendant shall be liable by virtue of the bond, he shall be acquitted and discharged from all further liability, and judgment rendered in his favor.

SEC. 4867. If it shall appear that the amount of damages so recovered and which such surety has paid, or will be obliged to pay, is not equal to the amount of his liability, the amount thereof shall be allowed to him in estimating the extent of his liability in any such action.

SEC. 4868. Whenever a judgment shall be obtained on any official bond against principal and sureties, a direction shall be indorsed on the execution, by the plaintiff or his attorney, to levy the amount, in the first place, on the property of the principal; and if sufficient property of such principal can not be found to satisfy such execution, then to levy the deficiency on the property of the sureties.

SEC. 4869. If several judgments be obtained at the same time upon any official bond, for damages amounting in the whole to more than the sum for which the sureties are liable, the court shall order the moneys levied from the property of the sureties on such judgments to be divided and distributed among the persons to whose use such judgments were rendered, respectively, in proportion to the amount of their respective recoveries.

SEC. 4870. The provisions of this act in relation to suits on official bonds shall apply as well to suits on bonds of administrators, executors, guardians and others required by law to give bond, with condition for the performance of any duty or trust, as to suits on bonds of officers; and the persons aggrieved may prosecute suits in the same manner and with like effect, and subject in all respects to the provisions herein contained in respect to suits on official bonds; and the court shall possess the same power in relation to such suits. *Rev. Stat., chap. 112.*

CHAPTER CXVIII.

PENITENTIARY.

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COMMISSIONERS TO LEASE AND MANAGE.

SECTION 4871. The governor, secretary of state and attorney-general are hereby constituted a board of commissioners for the management and leasing of the State Penitentiary, labor of convicts, machinery, buildings and all other property thereto belonging, for periods of ten years from the expiration of the present lease, as hereinafter provided.

SEC. 4872. The governor shall be president of said board of commissioners, and a majority of said board shall have power to convene a meeting of the same at such times and places as they may designate; and a majority thereof, when so convened, shall constitute a quorum, and be empowered to perform all the duties and exercise all the powers required of and invested in said board of commissioners.

SEC. 4873. The secretary of state shall be the secretary of said board of commissioners, and shall keep a record of all the proceedings thereof, and all

contracts and agreements made by said board under the provisions of this act shall be signed by the members of said board, and attested by the secretary thereof, with the seal of the state affixed thereto.

SEC. 4874. The said board of commissioners shall exercise such supervision over said penitentiary, the buildings, machinery, convicts and all property thereto belonging, as will protect the interests of the state under any contract authorized by and made under the provisions of this act, and shall perform all the functions necessary for the purpose of carrying out said contract. They shall, at least once in every three months, personally inspect said penitentiary and the convicts therein, and see that they are properly clothed and fed, and that the lessee is faithfully performing his contract, and shall submit a report of their proceedings to the general assembly at each session thereof, together with such suggestions in regard to said penitentiary as they may deem proper.

SEC. 4875. The said commissioners shall not become interested in any contract or profits arising from said lease, or any contract made under said lease; and, upon conviction of a violation of this section, said commissioners shall be deemed guilty of a misdemeanor, and be fined in a sum not less than one thousand dollars nor more than five thousand dollars; and any contract made by said commissioners in which they shall be interested shall be and is hereby declared null and void. *Act March 21, 1881, secs. 1-5.*

SEC. 4876. The said board of commissioners shall prescribe such rules for the regulations of said penitentiary and for the management thereof as, in their judgment, will prevent the inhuman treatment and preserve the discipline of the convicts and protect the interests of the state. *Provided, however,* that said board shall prescribe no rule after the leasing of said penitentiary which will work to the manifest injury of the lessee or lessees, and which will conflict with any contract made in accordance with the provisions of this act.

SEC. 4877. If, for any cause, any lessee or lessees shall forfeit or abandon his or their contract, the said commissioners shall at once take charge of said penitentiary, convicts, machinery, and all other property thereto belonging, and immediately proceed to re-lease the same as herein specified, and, in the meantime, shall employ sufficient guards and a superintendent to keep said convicts employed and prevent their escape; and the auditor shall issue a certificate for the amount of all costs and expenses incurred thereby, and the attorney-general shall immediately institute suit on the official bond of the lessee or lessees so forfeiting or abandoning their contract, and shall be entitled to recover thereon all amounts expended by the state on account thereof, and also all damages which the state may sustain in any manner by reason of said forfeiture or abandonment. *Ib., secs. 9 and 20.*

LEASING—CONDITIONS, ETC.

SEC. 4878. The said board of commissioners shall, twelve months prior to the expiration of the present or any subsequent lease of the penitentiary, cause notices to be published in the official paper in the City of Little Rock, and one daily paper in each of the cities of St. Louis and Memphis, for at least thirty days, that they will, until a certain day therein named—which day shall be six months after date of publication—receive bids for the leasing of the

said penitentiary, buildings, machinery, labor of convicts and all property thereto belonging, for the period of ten years, in accordance with the provisions of this act.

SEC. 4879. The bids for the leasing of said penitentiary, labor of convicts and the buildings, machinery and property thereto belonging, as hereinbefore provided, shall be directed to the governor as the president of said board of commissioners, and shall be accompanied by a good and sufficient bond in the sum of ten thousand dollars, conditioned for the faithful execution of a contract and bond as hereinafter required and provided, and in accordance with the stipulations in each and every bid so received.

SEC. 4880. On the day designated as the expiration of the time for receiving bids the governor shall, as hereinbefore directed, convene the said board of commissioners and shall, at the hour of 12 o'clock M. of said day, open all bids received by him for the leasing of said penitentiary, as hereinbefore provided, in the presence of said board, and the said board of commissioners shall, after due consideration of said bids, give a contract, as herein provided, to the highest and best responsible bidder, which contract shall be signed in duplicate by the said board of commissioners, as hereinbefore provided, and the person or persons to whom the said contract shall be awarded or given; *provided, however*, that if any or all of said bids shall, in the judgment of the board of commissioners, be detrimental to the interests of the state, or such as will not fully carry out the intention and meaning of this act, then, and in that case, said board of commissioners shall reject all of said bids, and shall re-advertise as before provided, and proceed as provided in sections 4878, 4879 and 4880; and then, if no bids be received as contemplated in this act, the said board shall lease out the said penitentiary, as hereinbefore provided, to any responsible person or persons who will comply with the provisions of this act; and all bids received by the said board of commissioners, as well as one of the duplicate copies of the contract made and signed as hereinbefore provided, shall be filed in the office of the secretary of state.

SEC. 4881. Before the State of Arkansas shall be bound by any contract authorized by or made as provided for in this act, said contract shall expressly state and conform to, and the meaning and intention thereof shall be to carry out, the following stipulations, limitations, agreements and provisions, to wit:

First. The state shall be relieved in said contract of all responsibility on account of the clothing, guarding, feeding or subsistence of, and the providing of medicines and medicinal appliances for, any convicts which may be turned over to said lessee; but the same shall be provided and furnished without cost to the state by the lessee or lessees of the said penitentiary, as hereinbefore provided for, and the state shall not pay for the same or any part thereof.

Second. The lessee or lessees, as hereinbefore mentioned and provided for, shall provide all necessary fuel and lights for the penitentiary and for the convicts therein; and the state shall not pay or be held responsible for the same or pay any part thereof.

Third. The lessee or lessees, as hereinbefore provided for, shall not work said convicts for more than ten hours for each working day of the week.

Fourth. No convict or convicts now confined in said penitentiary, or who may hereafter be confined therein, shall be permitted to go without the walls

of said penitentiary unless under a good and sufficient guard to prevent the escape of said convict or convicts.

Fifth. The convicts in said penitentiary shall be provided with sufficient good and wholesome food, and striped clothing, such as is now provided or that may be provided by the board of commissioners in said contract.

Sixth. The lessee or lessees shall preserve discipline among the convicts, by the enforcement of such rules, prescribed by the board of commissioners, not inconsistent with the provisions of this act, as will prevent mutiny among or the escape of the said convicts.

Seventh. The lessee or lessees, as hereinbefore provided, shall receipt to the board of commissioners of said penitentiary for the buildings, machinery, the convicts and all property whatsoever in or about or belonging to said penitentiary, and, at the termination of his or their contract by expiration or forfeiture, shall agree to return the same to the proper person authorized by law to receive the same in as good order as when received, unavoidable casualty and accidents excepted.

Eighth. The state shall not be at any expense whatever in the management of said penitentiary by said lessee or lessees, unless as hereinafter provided.

Ninth. The board of commissioners shall have the right, for any willful violation of any contract under which said penitentiary or convicts shall be managed, to terminate the same by giving ten days' notice thereof.

Tenth. The lessee or lessees shall admit ministers of the gospel to preach to the convicts of the penitentiary on the Lord's Day, and permit the distribution of religious books and papers among the same according to the rules of the prison.

Eleventh. The sick among the convicts of said penitentiary shall be under the care and supervision of the attending physician, and shall not be removed from the hospital room in said penitentiary when placed therein by the said physician, unless by the consent of the said physician.

Twelfth. The lessee or lessees shall agree to enter into bond, with good and sufficient security, as hereinafter provided, to the effect that the parties to the contract shall be bound by and shall carry out the provisions of this act. *Ib.*, secs. 10-13.

SEC. 4882. The said board of commissioners shall, at the expiration of the present lease, receive from and receipt to the present lessee of the penitentiary for all buildings, machinery, tools and all other property belonging to said penitentiary, and shall make a correct inventory thereof, with the valuation of the same, and deliver said property to the lessee or lessees declared entitled to the possession of the penitentiary, taking his or their receipt therefor; said inventory and receipt shall be filed in the office of the secretary of state immediately thereafter; and the said lessee or lessees shall be responsible for all property enumerated in said receipt and inventory. *Ib.*, sec. 14.

SEC. 4883. The said lessee or lessees shall give a bond, with good and sufficient security, to be approved by the said board of commissioners, in the sum of one hundred thousand dollars, for the faithful performance of his or their contract before he or they shall be entitled to said contract, and said bond shall be filed in the office of the secretary of state, and the makers of said bond

shall be liable thereon for any violations of the conditions thereof, or any loss or damage which may accrue to the state arising from any violation or forfeiture of the contract of said lessee or lessees, during the period for which said lease shall have been made, to be recovered by action instituted on said bond by the attorney-general of the state in any court having jurisdiction in the state. *Provided, however, if, at any time, the said board of commissioners shall consider it necessary, after the making of said contract, they may require additional security, sufficient to protect the interests of the state on account of any forfeiture, default or removal from the state of any principal or security on said contract or on said bond. And, provided, that the taking such additional security shall not affect the liability of any person on the original bond.*

SEC. 4884. The said lessee or lessees shall have and exercise entire control of the said penitentiary and the labor of said convicts, buildings, machinery, and all other property thereto belonging, for the term specified in said contract, and all profits arising therefrom shall inure to his or their benefit and interest, subject to the provisions herein for the entire term, and upon the conditions of his or their said contract. *Ib., secs. 16 and 17.*

PHYSICIAN.

SEC. 4885. The said board of commissioners shall, at the beginning of said lease, and every two years thereafter, appoint a physician of the penitentiary, who shall hold his office for the term of two years, unless removed for cause by said board; and the said board shall have power to fill any vacancy that may occur in said office (*).

SEC. 4886. It shall be the duty of said physician to visit daily the convicts in the penitentiary, and prescribe for the sick therein, and he shall make such suggestions and recommendations concerning the sanitary condition of the penitentiary as in his judgment he may deem necessary. He shall also inquire into the general treatment of the prisoners, and see that they are not inhumanly punished; that they are properly clothed; that they are sufficiently supplied with blankets, etc., for bedding; that they are sufficiently fed on good, healthy and sound food; that they are not overworked; that they are not worked when their state of health forbids; that their cells are properly warmed and ventilated; that the convicts are, in all things, whether within or without the walls, humanely treated; and shall make a quarterly report to the board of commissioners.

SEC. 4887. The board of commissioners shall, on receiving notice from the physician or otherwise that the lessee is inhumanly treating the prisoners, or not faithfully performing his duty as lessee, notify said lessee thereof; and on his failure or refusal to comply with the terms of his lease, or to treat the convicts humanely, shall take such steps as may be warranted by law to remedy such wrong or neglect. *Ib., secs. 6, 7 and 8.*

CHAPLAIN.

SEC. 4888. The governor is authorized to appoint a chaplain to preach for the convicts in the penitentiary, who shall hold his office for the term of twelve

(*) For salary of physician, see SEC. 3974.

months from and after his appointment, and whose duty it shall be to preach at least once each Sabbath.

SEC. 4889. The governor shall have power to remove said chaplain for cause and appoint a successor. *Act Feb. 17, 1859, secs. 8, 9.*

CONVICTS.

SEC. 4890. The lessee or lessees of the penitentiary shall receive and receipt in duplicate for any person who shall be convicted by any federal or state court in this state, and sentenced to confinement in said penitentiary, and shall keep any such person according to sentence until the expiration of the term thereof, unless sooner discharged by due course of law, and the sheriff or other officer receiving such receipts shall file one copy of the same with the secretary of the board of commissioners. *Provided, however, that the United States shall be responsible to the said lessee or lessees for any prisoners now or hereafter confined therein for any and all expenses incurred in the keeping, clothing and subsistence of the same. Act March 21, 1881, sec. 15.*

SEC. 4891. The board of commissioners shall provide a book, with a suitable index thereto, in which shall be entered the name, age, size, sex and complexion of every prisoner, the offense for which he was sentenced, the term of his sentence, his occupation and place of nativity, and the county from which he was sentenced. *Act March 28, 1871, sec. 16.*

SEC. 4892. The convicts, now or hereafter confined in said penitentiary, shall not be worked within the corporate limits of the City of Little Rock, except on public improvements (†) and buildings and grounds owned by the state, nor elsewhere, without the walls of said penitentiary, unless under good and sufficient guard, to prevent the escape of the same (*), nor longer than ten hours each working day. *Act March 21, 1881, sec. 18.*

SEC. 4893. The male and female convicts shall, at all times and on all occasions, be kept separate and apart from each other. Each convict shall be lodged at night in an apartment separate from all others, except in cases of sickness, when it may be necessary to remove him to the hospital. The male convicts shall be kept separate while at work, unless in cases where it is absolutely necessary that it should be otherwise.

SEC. 4894. No person, except the officers of the prison, the judges of the several courts, grand jurors, members of the general assembly, or persons producing a written license, signed by the board of commissioners, shall be permitted to enter within the walls of said prison and penitentiary. *Act Dec. 17, 1838.*

SEC. 4895. To encourage prisoners to conduct themselves with industry and propriety, it shall be the duty of the governor, whenever it appears from the reports of the contractors or keepers that the conduct of a prisoner has been exemplary and unexceptional for a whole month together, to commute such prisoner's term of confinement, for any period of time, not exceeding two days for each and every month that he may have so conducted himself. *Act Jan. 31, 1867, sec. 8.*

(†) See *Ward v. City of Little Rock*, 41—526.

(*) It is a felony to "willfully or corruptly suffer, connive at or permit the escape of any convict. See *Sec. 1780.*

SEC. 4896. The lessee or lessees of the penitentiary shall, upon the discharge of each and every prisoner therefrom, furnish him or her with a suit of plain citizen's clothes, if such discharged prisoner shall have none on hand, and shall also furnish said discharged prisoner with two dollars in money, with which to procure subsistence until he or she can find employment. *Act March 21, 1881, sec. 21.*

CONVEYANCE OF CONVICTS.

SEC. 4897. Every person sentenced to the penitentiary shall, as soon as possible after conviction, be safely conveyed to the said penitentiary by the sheriff of the county in which the conviction shall have taken place; and the sheriff, in all cases of conveying such prisoners, shall have power to employ such guard and use such means for the safety of such convicts on their conveyance to the penitentiary as may be deemed necessary by such sheriff (*) or the court passing such sentence. *Act Dec. 17, 1838.*

SEC. 4898. In all cases where any sheriff or coroner shall be required by law to convey any convict to the penitentiary he shall receive therefor, out of the state treasury, the sum of two dollars for every twenty miles he may travel in going to and returning from the penitentiary; and he may summon a guard, not to exceed one for each prisoner (†). *Provided*, he shall in no instance summon a greater number of guards than three for any number of prisoners, unless otherwise ordered by the court; and they shall each receive, as compensation for their services, the sum of one dollar and fifty cents for every twenty miles they may travel going to and returning from the penitentiary; and every sheriff or other proper officer shall be allowed all necessary expenses incurred in conveying convicts to the penitentiary of the state. *Act Jan. 8, 1845, and act March 2, 1867, as amended by act March 9, 1877.*

SEC. 4899. In auditing the account of any sheriff for the transportation of convicts to the penitentiary the auditor shall allow the fees as now prescribed by law. *Provided*, that, unless ordered by the court, no sheriff shall be allowed fees for more than one guard for three or a less number of convicts, and not more than three guards for any number. *Act March 13, 1883, sec. 4.*

SEC. 4900. The receipt of the keeper of the penitentiary shall be sufficient evidence to the auditor to authorize him to draw his warrant upon the treasury for the amount which may be due.

SEC. 4901. In estimating the distance which officer and guard may have traveled in the conveyance of said convicts as aforesaid, it shall be computed from the place of conviction to the penitentiary by the most usual and direct route.

SEC. 4902. The auditor shall be authorized to administer oath to the officer delivering the convict, so as to ascertain any fact which may be necessary to fully enable him to correctly audit and adjust the claim authorized by this act. *Act Jan. 8, 1845.*

SEC. 4903. In all cases in which sheriffs shall convey convicts to the penitentiary for the compensation allowed them and the guard by law, the auditor

(*) But see SECS. 4898, 4899.

(†) But no fees can be allowed for more than one guard for three or a less number of convicts, unless ordered by the court. See SEC. 4899.

shall be authorized to give credit on their account for state revenue for the amount due, or which shall be due, such sheriffs and the guard to any such sheriffs to whom such compensation shall be due, whether the accounts therefor be directly in favor of such sheriffs or transferred to them (*). *Act Nov. 20, 1846.*

SEC. 4904. In all cases where the sheriff of Pulaski County may be ordered by the supreme court to take or convey from the penitentiary any convict therein to the county seat of any county in this state, said sheriff shall be entitled to the same pay, and shall be paid in the same manner, as the sheriffs of the several counties are paid for conveying convicts to said penitentiary (b). *Act Dec. 20, 1852.*

DEPOSIT OF MONEY BY LESSEES.

SEC. 4905. The lessees of said penitentiary for the term of ten years, from the seventh day of May, eighteen hundred and eighty-three, for the purpose of paying the expenses of transporting convicts from the respective counties of the state where convicted to the penitentiary, and for the purpose of paying the salary of the physician of said penitentiary, are hereby required to deposit, on or before the seventh day of May, eighteen hundred and eighty-three, in the state treasury, the sum of not less than one thousand dollars; and they shall at all times, during their term of lease, maintain and keep upon deposit in said treasury, for the purposes aforesaid, not less than one thousand dollars.

SEC. 4906. Upon said deposit being made as prescribed in the preceding section, the treasurer shall execute duplicate receipts therefor, one of which shall be delivered to said lessees and the other deposited with the auditor of state, who shall charge the treasurer therewith; and the auditor shall keep an account of all such deposits with the treasurer.

SEC. 4907. Whenever the salary of the physician of the penitentiary becomes due, or whenever any expense is incurred by reason of the transportation of any convict or convicts, the auditor shall draw his warrant upon the treasurer therefor, specifying in said warrant that the same is drawn upon the fund so deposited by the lessees of the penitentiary as in this act provided; and the treasurer shall pay the same out of the said fund, and none other. *Provided*, that the auditor shall not draw any warrant in favor of any sheriff on account of the transportation of any convict, unless such sheriff shall have first filed with the auditor his affidavit to the effect that the distance charged for is not more than the actual number of miles he will be compelled to travel by the nearest route in conveying said convict to the penitentiary and returning, and the number of guards charged for are no more than were actually necessary to prevent the escape of the convict, or than were ordered by the court, as the case may be, and, in addition, shall produce to the auditor satisfactory evidence that he has filed with the secretary of the board of commissioners of the penitentiary the receipt of the lessees of the penitentiary for the convict or convicts for whose transportation the expense was incurred. *Act March 13, 1883, secs. 1-3.*

SEC. 4908. Whenever said lessees shall fail to keep at least the sum of one thousand dollars on deposit in the state treasury, as by this act required, so

(*) But see SEC. 4907.

(b) See SEC. 4898.

soon as such deficiency occurs it shall be the duty of the treasurer immediately to notify said lessees of such deficiency, and require that they immediately make the deposit as by this act required; and, in case said lessees fail to make such deposit within five days, the treasurer shall notify the governor of said default, and it shall be the duty of the governor forthwith to convene the board of commissioners of the penitentiary, and said board shall at once take such steps as may be necessary to compel said lessees to comply with the stipulation of their contract and the provisions of this act.

SEC. 4909. At the expiration of the term of said lease, and the full performance of their contract by said lessees, the auditor shall draw his warrant upon the treasurer in favor of said lessees or their assigns for all such sums of money as may be on deposit in the state treasury belonging to said lessees, and deposited by them in pursuance of the provisions of this act, and the treasurer shall pay the same. *Ib.*, *secs. 5 and 6.*

CHAPTER CXIX.

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CODE OF PRACTICE.

SECTION 4910. The "Code of Practice in Civil Cases" shall regulate the procedure in all civil actions and proceedings in all the courts of this state, though not expressly enumerated, and of all that may hereafter be created; and all laws coming within the purview of its provisions shall be repealed (a). *Civil Code, secs. 796 and 780.*

(a) But as to justices' courts, see SECS. 4034, 4035. And see SECS. 6363, 5021.

REMEDIES—HOW DIVIDED.

SEC. 4911. Remedies in civil cases are divided into two classes:

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Second. Special proceedings.

SEC. 4912. A civil action is an ordinary proceeding in a court of justice by one party against another for the enforcement or protection of a private right, or the redress or prevention of a private wrong. It may also be brought for the recovery of a penalty or forfeiture.

SEC. 4913. Every other remedy in a civil case is a special proceeding. *Civil Code, secs. 2-4, Preliminary Provisions.*

FORM OF CIVIL ACTIONS.

SEC. 4914. The forms of all actions and suits heretofore existing are abolished.

SEC. 4915. There shall be but one form of action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be called a civil action.

SEC. 4916. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

SEC. 4917. The proceedings in a civil action may be of two kinds:

First. At law.

Second. In equity.

SEC. 4918. The plaintiff may prosecute his action by equitable proceedings in all cases where courts of chancery, before the adoption of this code, had jurisdiction, and must so proceed in all cases where such jurisdiction was exclusive.

SEC. 4919. In all other cases the plaintiff must prosecute his action by proceedings at law.

SEC. 4920. An action upon a written obligation or judgment which has been lost or destroyed may be prosecuted by proceedings at law. *Civil Code, secs. 1-6.*

SEC. 4921. No action to obtain a discovery shall be brought except as provided in the next section.

SEC. 4922. Where any person or corporation is liable, either jointly or severally with others, by the same contract, an action may be brought against any of the parties who are liable to obtain discovery of the names and residences of the others who are also liable.

SEC. 4923. In such action the plaintiff shall state in his complaint, in effect, that he has used due diligence, without success, to obtain the information asked to be discovered, and that he does not believe the parties to the contract who are known to him have property sufficient to satisfy his claims. The complaint shall be verified, and the cost of such action shall be paid by the plaintiff, unless the discovery be resisted. *Ib., sec. 788.*

SEC. 4924. The writ of *ne exeat* as a remedy in a civil action is abolished. *Ib., sec. 790.*

SEC. 4925. An error of the plaintiff as to the kind of proceedings adopted shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings by an amendment in the pleadings and a transfer of the action to the proper docket (aa).

SEC. 4926. The error mentioned in the last section may be corrected by the plaintiff without motion at any time before the defendant has answered, or afterward, on motion in court.

SEC. 4927. Such error is waived by failure to move for its correction at the time and in the manner prescribed in this chapter, and all errors in the decisions of the court on any of the motions named in this chapter are waived unless excepted to at the time, which may be done by the clerk noting at the end of such decision words of the following import: "To which decision the plaintiff (or defendant) excepts" (b).

SEC. 4928. The defendant shall be entitled to have the correction made in the following cases:

First. When the action has been commenced by equitable proceedings the defendant, by motion made at the time of filing his answer, may have them changed into proceedings at law when it appears that, by the provisions of section 4919, the plaintiff should have adopted proceedings at law, unless his answer presents an equitable defense.

Second. When the action has been commenced by proceedings at law the defendant, by motion made at or before the time of filing his answer, may have them changed into equitable proceedings when it appears that, by the provisions of section 4918, the plaintiff should have adopted proceedings in equity.

SEC. 4929. Where the action has been properly commenced by proceedings at law, either party shall have the right, by motion, to have any issue which heretofore was exclusively cognizable in chancery tried in the manner hereinafter prescribed in cases of equitable proceedings (*); and if all the issues are such as heretofore were cognizable in chancery, though none were exclusively so, the defendant shall have the right to have them all tried as in cases of proceedings in equity.

SEC. 4930. If the plaintiff's claim is for money due by contract, and the defendant puts in a defense of exclusively equitable cognizance, upon the plaintiff filing an affidavit that he verily believes that he will succeed in the action, and that the collection of his claim after judgment will be endangered by the delay arising from such defense being put in, the court shall require the defendant to give security for the payment of any judgment that

(aa) See SEC. 4928.

Where there is an equitable issue in a suit at law, and there is no motion to transfer, the issue must be disposed of according to the principles involved. *Trulock v. Taylor*, 26—54.

Purely equitable relief can not be granted in a suit properly brought at law. *Little Rock Railroad Co. v. Perry*, 37—185.

Objection that suit should have been brought at law can not be raised by demurrer. *Ib.* Equitable relief can not be granted on an application for mandamus unless the pleading is reformed and the cause transferred. *Cravford v. Carson*, 35—565. The court is not bound to make the transfer unless asked. *Berry v. Hardin*, 29—458. And if no motion is made the objection is waived. *Moss v. Adams*, 32—562; *Talbot v. Wilkins*, 31—411. A mere transfer to the equity side does not make the cause one of equitable relief. *Roberts v. Jacks*, 31—598. When an equitable answer asks relief the cause should be transferred. *Ivey v. Drake*, 36—228.

(b) For time and manner of taking exceptions, see SECS. 5157—5161.

An error in sustaining a demurrer to part of an answer is not waived because not excepted to on the record. *Collins v. Karatopsky*, 36—323.

(*) See SEC. 5106.

the plaintiff may obtain in the action, and, upon his failure to give such security, shall order the defendant to pay into court an amount sufficient to discharge the plaintiff's claim and his probable costs; upon which order execution may be issued as upon a judgment, and the amount collected upon execution shall be brought into court and await the decision of the action, and be paid to the plaintiff or defendant, according to such decision. But no security shall be required if the trial of the equitable defense takes place during the term at which it is put in, nor until all defenses to the action, other than those of equitable cognizance, are tried or disposed of in favor of the plaintiff.

SEC. 4931. The provisions of this chapter concerning the prosecution of a civil action apply to both kinds of proceedings, unless the contrary appears.

SEC. 4932. A judgment obtained in an action by proceedings at law shall not be annulled or modified by any order in any action by equitable proceedings, except for a defense which has arisen or been discovered since the judgment was rendered; but such judgment does not prevent the recovery of any claim, though such claim might have been used as a defense by way of set-off or counter claim in the action on which the judgment was recovered (c). *Ib.*, *secs.* 7-14.

PARTIES TO CIVIL ACTIONS.

Generally.

SEC. 4933. Every action must be prosecuted in the name of the real party in interest, except as provided in sections 4935, 4936 and 4938 (d).

SEC. 4934. Where the assignment of a thing in action is not authorized by statute, the assignor must be a party, as plaintiff or defendant.

SEC. 4935. Where the right of the plaintiff is transferred or assigned during the pendency of the action, it may be continued in his name, or the court may allow the person to whom the transfer or assignment is made to be substituted in the action, proper orders being made as to security for the costs.

SEC. 4936. An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or the state, or any officer thereof, or any person expressly authorized by the statute to do so, may bring an action without joining with him the person for whose benefit it is prosecuted (e). *Ib.*, *secs.* 25-28.

SEC. 4937. Administrators and executors appointed in any of the states, territories or districts of the United States, under the laws thereof, may sue in any of the courts of this state, in their representative capacity, to the same and

(c) A party suing on a claim that might have been set off in a former suit recovers no costs. *See SEC. 5039.*

(d) The state may sue on a bond given to a county school commissioner. *Williams v. State*, 37-464. In suits by an administrator involving title to land, the heirs must be joined. *Sisk v. Almon*, 34-391; *Thurmer v. Brogan*, 41-88. A county treasurer may sue a collector on his bond. *Haynes v. Butler*, 30-69. Defect of parties is waived by going to trial without objection. *Yonley v. Thompson*, 30-399.

In a suit on a bond to A and B, both obligees should be joined, though the money sued for is going to A only. *McLeod v. Scott*, 38-76.

Partners in a mill on an imperfected homestead entry of one of them may join in a suit for trespass on the land. *Hot Springs R. R. v. Tyler*, 36-205. In a suit to foreclose a mortgage on land, the heirs of a deceased mortgagor are necessary parties. *Simms v. Richardson*, 32-297. And so in a suit by him relating to title to lands. *Anderson v. Partee*, 33-665. The administrator of a deceased legatee, and not his heirs, should sue to set aside settlement of administrator of his testator's estate; and so in a suit relating to personality of the estate, or to have lands brought with the money of the estate declared to be held in trust for it; but the heirs may sue for lands descended to them from the devisee. *Collins v. Warner*, 32-87.

(e) As to counties, *see SEC. 1067.*

like effect as if such administrators and executors had been qualified under the laws of this state (f). *Act Feb. 1, 1843.*

SEC. 4938. All actions and suits for the recovery of the purchase money of lands which have at any time, and from time to time, been granted to this state by the United States, or may hereafter be granted, for any and all purposes, except such grants as have been or may hereafter be made for railroad purposes, and all actions to enforce the vendor's lien upon any such lands, and all actions to recover the possession of, or for trespasses upon, any such lands, shall be brought and prosecuted in the name of the State of Arkansas; and the fact that any and all of said lands may have been set apart, or allotted, or granted, by the state to any county, township or school district shall not be a defense to any action brought under this section, and shall not affect the jurisdiction of the court in which the action may be pending, but all questions as to the rights of such counties, townships or school districts shall be reserved, and shall not be affected by any proceeding under section 4936.

SEC. 4939. All persons having an interest in the subject of an action, and in obtaining the relief demanded, may be joined as plaintiffs, except where it is otherwise provided (g).

SEC. 4940. Any person may be made a defendant who has, or claims, an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination and settlement of the questions involved in the action (h).

SEC. 4941. Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but when, for any cause, it may be necessary, for the purpose of justice, a person who should have been joined as plaintiff may be made a defendant, the reason therefor being stated in the complaint.

SEC. 4942. Where the question is one of a common or general interest of many persons, or where the parties are numerous, and it is impracticable to bring them all before the court within a reasonable time, one or more may sue or defend for the benefit of all.

SEC. 4943. Persons severally liable upon the same contract, including parties to bills of exchange, promissory notes, common orders and checks, and sureties on the same or separate instruments, may all, or any of them, or the representatives of such as may have died, be included in the same action, at the plaintiff's option (i).

SEC. 4944. Where two or more persons are jointly bound by contract, the action thereon may be brought against all or any of them, at the plaintiff's

(f) As to foreign guardians, see SEC. 3522.

(g) In a suit charging fraud in the accounts of an administrator, his sureties may be made defendants. *Reinhardt v. Gurtrell*, 33—727. In ejectment for mortgaged lands and for rents by the mortgagee, the administrator is not a necessary party. *Simms v. Richardson*, 32—304. In a foreclosure suit, a senior mortgagee need not be made a party. *White v. Holman*, 1 b., 753. In a suit involving the validity of a will, all legatees are necessary parties. *Janca v. Williams*, 31—175. In a suit to subject assets descended, the heir is the only necessary party. *Williams v. Ewing*, 1b., 229. One or more parties to a contract may be sued. *Bradford v. Toney*, 30—763. In equity, all persons interested in the subject-matter should be made parties. *Holland v. Burris*, 28—171; *Taliaferro v. Barnett*, 37—517.

(h) Misjoinder of defendants no ground of demurrer. *Fry v. Street*, 37—42. Nor for arrest of judgment. *Little Rock Railroad Co. v. Dyer*, 35—363. Nor can it be taken advantage of at the trial. *Hot Springs Railroad Co. v. Tyler*, 36—205. As to parties to a suit to annul a fraudulent conveyance, see *Hunt v. Weiner*, 39—70; *Littell v. Grady*, 38—584.

(i) See, as to parties to bills and notes, SEC. 482. As to when judgment may be rendered against part of defendants, see SECs. 5165, 5167.

option (j). Where any of the persons so bound are dead, the action may be brought against any or all of the survivors, with the representatives of all or any of the decedents (k), or against the latter or any of them. Where all the persons so bound are dead, the action may be brought against the representatives of all, or of any of them. An action or judgment against any one or more of several persons jointly bound shall not be a bar to proceedings against the other.

New Parties—Interpleader.

SEC. 4945. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights. But when a determination of the controversy between the parties before the court can not be made without the presence of other parties, the court must order them to be brought in (l).

SEC. 4946. Where, in an action for the recovery of real or personal property, any person having an interest in the property applies to be made a party, the court may order it to be done (m). *Civil Code, secs. 29-37.*

SEC. 4947. Upon affidavit of a defendant, before answer in any action upon contract or for the recovery of personal property, that some third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose thereof, as the court may direct, the court may make an order for the safe-keeping, or for the payment or deposit in court, or delivery of the subject of the action to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant, and in the meantime stay the proceedings. *Ib., sec. 38, as amended by act Nov. 30, 1875.*

SEC. 4948. If such third party, being served with a copy of the order, fail to appear, the court may declare him barred of all claim in respect to the subject of the action against the defendant therein. If he appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties, in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit or delivery thereof.

SEC. 4949. The provisions of the last two preceding sections shall be applicable to an action brought against a sheriff, or other officer, for the recovery of personal property taken by him under an execution, or for the proceeds of such property so taken and sold by him; and the defendant in any such action shall be entitled to the benefit of such provisions against the party in whose favor the execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the action was brought, was taken under such process.

SEC. 4950. In an action against a sheriff, or other officer, for the recovery

(j) Joint obligations are taken as joint and several, and survive. SECS. 3899, 3900.

(k) To the same effect, see SEC. 3901.

(l) See *Theurer v. Brogan*, 41—88. Defendants in ejectment can not require persons not in possession at beginning of suit to be made parties. *Simms v. Richardson*, 32—304. Plaintiff may amend by making new parties. *Benjamin v. Loughborough*, 31—210.

(m) When tenant is sued in ejectment, his lessor may be made a party. *Jackson v. Allen*, 30—111. But one claiming independently of both parties can not intervene. *Files v. Watt*, 28—151. One made a party at his own instance can not demur to the complaint. *Wright v. Walker*, 30—44. When assignee *pendens lite* may be made a party. *Ivey v. Drake*, 30—228.

of property taken under an execution, the court may, upon the application of the defendant, and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs being given (n). *Ib.*, secs. 38-40.

Married Women.

SEC. 4951. Where a married woman is a party, her husband must be joined with her, except in the following cases:

First. She may be sued alone upon contracts made by her in respect to her sole and separate property, or in respect to any trade or business carried on by her under any statute of this state. *Ib.*, sec. 42, and act April 28, 1873, secs. 4 and 8.

Second. She may maintain an action in her own name for or on account of her sole or separate estate or property, or for damages against any person or body corporate for any injury to her person, character or property. Act April 28, 1873, sec. 9.

Third. Where the action is between herself and her husband, she may sue and be sued alone (o). *Civil Code*, sec. 42.

SEC. 4952. If a husband and wife are sued together, the wife may defend for her own right; and if the husband neglects to defend, for his also.

SEC. 4953. Where a husband, being a father, has deserted his family, the wife, being a mother, may prosecute or defend in his name any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had.

SEC. 4954. When a female party to an action marries, the fact being stated upon the record, the husband may be made a party with his wife, and the action shall proceed.

Infants.

SEC. 4955. The action of an infant must be brought by his guardian or his next friend. Any person may bring the action of an infant as his next friend; but the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or another person, as the next friend.

SEC. 4956. The guardian or next friend is liable for the costs of the action brought by him, and where he is insolvent, and it is made to appear that the action is malicious, or that the next friend was selected because of his insolvency, the court, in its discretion, may require him to give security for the costs.

SEC. 4957. The defense of an infant must be by his regular guardian, or by a guardian appointed to defend for him, where no regular guardian appears, or where the court directs a defense by a guardian appointed for that purpose. No judgment can be rendered against an infant until after a defense by a guardian (p).

(n) This power is discretionary. *Ferguson v. Ehrenberg*, 39-421.

(o) She may sue alone for her separate property. *Berlin v. Cantrell*, 33-611. And on a note which is her separate property. *Beavers v. Baucum*, *Ib.*, 722. And for her lands. *Cairo R. R. Co. v. Parks*, 32-132.

(p) An attorney *ad litem* should not be appointed for an infant. *Hodges v. Frazier*, 31-58; *Williams v. Ewing*, *Ib.*, 229.

The defense of the guardian must be not merely formal, but real and earnest; he should put in issue and require proof of every material allegation to the infant's prejudice, whether it be true or not, and make no concessions on his own knowledge. *Pinchback v. Graves*, 42-222. See SEC. 5042; *Moore v. Woodall*, 40-42; *Freeman v. Russell*, *Ib.*, 53.

SEC. 4958. The guardian to defend shall be appointed by the court, or by the judge thereof. The appointment can not be made until after service of the summons in the action (†). No party or attorney in an action can be appointed guardian to defend therein for an infant or person of unsound mind. During the vacation of their courts, the clerks of circuit and chancery courts shall have the same power of appointing guardians *ad litem* for infant defendants who have been summoned in the action that their respective courts or the judges thereof have; but the court or judge shall have power to change the guardians so appointed, by appointing others in their stead, whenever the interests of the infant require such a change. The clerk shall indorse the name of the guardian and the date of his appointment upon the complaint. *Ib.*, secs. 43—49.

SEC. 4959. The appointment may be made upon the application of the infant, if he is of the age of fourteen years, and applies within twenty days after the service of the summons. If he is under the age of fourteen years, or does not so apply, the appointment may be made upon the application of any friend of the infant, or on that of the plaintiff in the action (§). *Ib.*, sec. 50, as amended 1871.

Insane Persons and Prisoners.

SEC. 4960. The action of a person judicially found to be of unsound mind must be brought by his guardian, or, if he has none, by his next friend. When brought by his next friend, the action is subject to the power of the court, in the same manner as the action of an infant so brought.

SEC. 4961. The guardian or next friend is liable for the costs, and the court, in its discretion, may require him to give security for costs.

SEC. 4962. The defense of an action against a person judicially found to be of unsound mind must be by his regular guardian, or a guardian appointed by the court to defend for him, where no regular guardian appears, or where the court directs a defense by a guardian. No judgment can be rendered against him until after a defense by his guardian, or by a guardian appointed for that purpose. No appointment can be made until after service of the summons.

SEC. 4963. The guardian to defend may be appointed on the application of any friend of the defendant, or on that of the plaintiff.

SEC. 4964. Where a party is judicially found to be of unsound mind during the pendency of an action, the fact being stated on the record, if he is plaintiff, his guardian may be joined with him in the action as such. If he is defendant, the plaintiff may, upon ten days' notice thereof to his guardian, have an order making the guardian a defendant, also.

SEC. 4965. No judgment can be rendered against a prisoner in the penitentiary until after a defense made for him by his attorney, or, if there is none, by a person appointed by the court to defend for him.

SEC. 4966. A guardian or attorney, appointed on the application of the plaintiff to defend for an infant, person of unsound mind, or prisoner, shall be

(†) See *Freeman v. Russell*, 40—56.

(§) Where the number and names of infant heirs are unknown, a guardian *ad litem* can not be appointed for them. *Kountz v. Davis*, 34—590.

allowed a reasonable fee for his services, to be paid by the plaintiff, and taxed in the costs.

COMMENCEMENT OF A CIVIL ACTION.

SEC. 4967. A civil action is commenced by filing in the office of the clerk of the proper court a complaint and causing a summons to be issued thereon.

Summons ()*.

SEC. 4968. The summons shall be directed to the sheriff of the county, and command him to summon the defendant or defendants named therein to answer the complaint filed by the plaintiff, giving his name, at the time stated therein, under the penalty of the complaint being taken for confessed, or of the defendant being proceeded against for contempt of court on his failure to do so. The summons shall be dated the day it is issued, and signed by the clerk.

SEC. 4969. A summons shall be issued at any time, to any county, against any one or more of the defendants, at the plaintiff's request. But a summons not served shall not be taxed in the costs, unless otherwise ordered by the court.

SEC. 4970. With every summons, the clerk shall issue as many copies thereof as there are defendants named therein, unless otherwise ordered by the plaintiff.

SEC. 4971. In actions by proceedings at law, the time fixed in the summons for the defendant to answer shall be the day the summons is returnable; in actions by equitable proceedings, it shall be twenty days after the service of the summons.

SEC. 4972. The summons shall be made returnable the first day of the next term of the court, unless the term begins within ten days from the date of the summons, when it shall be returnable the first day of the term following.

SEC. 4973. The summons and copies shall be delivered to the sheriff or other officer authorized to execute it.

SEC. 4974. It shall be the duty of the sheriff, or one of his deputies, to attend at the clerk's office daily (Sundays excepted), to receive any process that may be issued, and the clerk shall deliver to him any process remaining in his office. *Ib.*, secs. 51-65.

Service of Summons.

SEC. 4975. The summons may be served:

First. By the officer to whom it is directed, unless he is a party to the suit, or unless the plaintiff, or his agent or attorney, files with the clerk an affidavit to the effect that the obtaining of a sheriff or deputy to serve the summons will occasion such delay as to render it probable that the same can not be served in time; in which case the summons may be served by a jailer, coroner or constable. *Provided*, that the clerk shall indorse upon such summons, that the

(*) A summons is not subject to demurrer. If so fatally defective as not to be amendable, it may be quashed on motion. *Flynn v. State*, 42--315.

same may be served by such officer, and the return of such officer shall be evidence of the service to the same extent as if made by the sheriff.

Second. By any person appointed by the officer to whom the same is directed, by an indorsement on the summons, whose affidavit, indorsed thereon, shall be proof of the time and manner of service.

Third. By any person not a party to the action, in all actions arising on contract for the recovery of money only, whose affidavit, indorsed thereon, shall be proof of the time and manner of service (q).

SEC. 4976. The service shall be:

First. By delivering to the defendant a copy of the summons; or,

Second. If he refuses to receive it, by offering a copy thereof to him; or,

Third. By leaving a copy of such summons at the usual place of abode of the defendant, with some person who is a member of his family over the age of fifteen years. *Ib.*, secs. 65 and 66, as amended 1871 (r).

SEC. 4977. The return of service upon a summons must state the time and manner of service (s); and, if a return of service by an officer is defective, he may be fined by the court, not exceeding ten dollars, and shall be liable to any person aggrieved by such defect. But the court may permit an amendment, according to the truth of the case.

SEC. 4978. Service may be acknowledged by the defendant by an indorsement upon the summons, signed and dated by him, and attested by a witness. The affidavit of the witness shall be proof of the service. *Ib.*, secs. 67 and 68.

SEC. 4979. Where the defendant is a corporation, created by the laws of this state, the service of the summons may be upon the president, mayor or chairman of the board of trustees, and, in case of the absence of the above officers, then it may be served upon the cashier, treasurer, secretary, clerk or agent of such corporation, and, in case of railroad corporations, upon any station agent, or upon any person who has control of any of the business of said corporation, either as clerk, agent or otherwise, who, as such agent or clerk, has to report to the corporation who employed them; and, in cases of railroad corporations, a service of a copy of the summons upon the clerk or agent of any station in the county where the same shall be issued shall be deemed and considered as a good and valid service. *Ib.*, sec. 69, as amended by act March 9, 1877.

SEC. 4980. Where the defendant is an incorporated bank, and the action is in a county in which there is a branch thereof, the service may be upon the president or cashier of that branch.

SEC. 4981. Where the defendant is an incorporated insurance company, and the action is in a county in which there is an agency thereof, the service may be upon the chief officer of such agency (t).

(q) Sheriffs must indorse time of receiving all process. SEC. 6329. And state at length the time, place and mode of service. SECS. 4977, 5316. When process may issue and be executed on holidays. SECS. 5309-5312.

An appearance is a waiver of a defective return. *Martin v. Godwin*, 34—682. And of defective service. *St. Louis Railway Co. v. Barnes*, 35—95.

(r) Return need not follow the exact language of the statute. *Dural v. Johnson*, 39—191. "At the residence" is equivalent to "The usual place of abode." *Ib.* But service on defendant's wife must show that she was over fifteen years old. *Barnett v. State*, 35—501.

(s) The clerk must note on his docket the date of service. SEC. 551. As to sheriff's return, see SEC. 5316.

(t) As to foreign insurance companies, see SEC. 3834.

SEC. 4982. Where the defendant is a foreign corporation, having an agent in this state, the service may be upon such agent.

SEC. 4983. Where the defendant is an infant under the age of fourteen years, the service must be upon him, and upon his father or guardian, or, if neither of these can be found, then upon his mother, or upon any other person having the care or control of the infant, or with whom he lives. Where the infant is over fourteen years of age, service on him shall be sufficient.

SEC. 4984. Where the defendant is a person judicially found to be of unsound mind, the service must be upon him and upon his guardian; if there is no guardian, upon his wife, or the person having the care of him, or with whom he lives, or the keeper of the asylum in which he may be confined.

SEC. 4985. Where the defendant is a prisoner in the penitentiary, a copy of the complaint must accompany the summons, and the service must be upon the keeper of the penitentiary, who shall deliver the copies of the complaint and summons to the defendant. And a copy of the summons must also be delivered to the wife of the prisoner, or, if he has no wife, left at the place where he resided, or claimed to reside, prior to his confinement, with some person of the age of sixteen years.

SEC. 4986. When any action to recover judgment against the owners or officers of any steamboat, or vessel, or other water-craft, for any debt or liability created by them, or either of them, shall have been commenced in any county in which said steamboat, vessel or water-craft was found, and, from any cause, the summons or other process can not be served in such action in the county where such action was commenced, a service in any other county in this state shall have the same effect as if made in the county where the action was brought.

SEC. 4987. Where a defendant is out of this state, the plaintiff may take a copy of the complaint, certified by the clerk, with a summons annexed thereto, warning such defendant to appear and answer the complaint within sixty days after the same shall have been served on him, and cause a copy thereof to be delivered to such defendant anywhere in the United States by some person to whom he is personally known. Proof of the delivery shall be made by the affidavit of the person making it, indorsed on or annexed to the certified copy and summons, in which the time and place of the delivery, and the fact that the defendant was personally known to the affiant, shall be stated. The officer before whom the affidavit is made shall certify that the affiant is personally known to him to be worthy of credit.

SEC. 4988. The certified copy and summons, with the affidavit and certificate, as provided in the last section, being returned and filed in the action, shall be deemed an actual service of the summons in due time for trial at the first term commencing not less than sixty days after such service.

Constructive Service.

SEC. 4989. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action, that the defendant is:

First. A foreign corporation, having no agent in this state; or,

Second. A non-resident of this state; or,

Third. Has departed from this state, with intent to delay or defraud his creditors; or,

Fourth. Has been absent from this state four months; or,

Fifth. Has left the county of his residence to avoid the service of a summons; or,

Sixth. Conceals himself so that a summons can not be served upon him; or,

Where either of the last two mentioned facts is stated in the return by the proper officer of a summons against the defendant, the clerk shall make upon the complaint an order warning such defendant to appear in the action within thirty days from the time of making the order. *Civil Code, secs. 70-79.*

SEC. 4990. The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. Warning orders shall be published weekly for at least four weeks (u). *Ib., sec. 80, as amended 1871.*

SEC. 4991. Where, in an action against the heirs of a deceased person as unknown heirs, or against other persons made defendants as unknown owners of any property to be divided or disposed of in the action, it appears by the complaint that the names of such heirs, or any of them, or of such other persons are unknown to the plaintiff, a warning order, as directed in the last section, shall be made by the clerk against such unknown heirs or owners.

SEC. 4992. A defendant against whom a warning order has been made and published shall be deemed to have been constructively summoned on the thirtieth day after the making of the order, and the action may proceed accordingly (v).

SEC. 4993. The plaintiff may, at any time before judgment, have a summons served on the defendant, if found in this state, although a warning order may have been previously entered against him, and after such service the case shall proceed as in other cases of actual service.

ACTIONS, WHERE BROUGHT.

SEC. 4994. Actions for the following causes must be brought in the county in which the subject of the action, or some part thereof, is situated:

First. For the recovery of real property, or of an estate or interest therein.

Second. For the partition of real property.

Third. For the sale of real property under a mortgage, lien or other incumbrance or charge.

Fourth. For an injury to real property (w).

SEC. 4995. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

First. An action for the recovery of a fine, penalty or forfeiture imposed by a statute, except that where the offense for which the claim is made was committed on a water-course or road which is the boundary of two counties, the action may be brought in either of them.

Second. An action against a public officer for an act done by him in virtue or under color of his office, or for a neglect of official duty.

Third. An action upon the official bond of a public officer, except as provided in section 5006.

(u) For law as to publication of legal notices, see chap. 94; *Pillow v. Sentelle*, 39-64.

As to sufficiency of warning orders, see *Williams v. Ewing*, 31-229. The statute must be strictly complied with. *Laurence v. State*, 30-719.

(v) For proceedings against parties constructively summoned, see SECS. 5188-5302.

(w) Consent can not give jurisdiction to a suit in another county. *Jacks v. Moore*, 35-31.

SEC. 4996. An action to establish or set aside a will must be brought in the county in which the will, if valid, ought, according to law, to be recorded.

SEC. 4997. An action to settle the estate of a deceased person must be brought in the county in which his personal representative was qualified.

SEC. 4998. An action for the distribution of the estate of a deceased person, or for its partition among his heirs, or for the sale of real property (x), must be brought in the county in which his personal representative was qualified.

SEC. 4999. An action by a ward against his guardian for a settlement of his accounts, for additional security, or for his removal, must be brought in the county in which the guardian was qualified. *Ib.*, secs. 81-89.

SEC. 5000. The following actions must be brought in the county in which the seat of government is situated: All actions now authorized by law to be brought in the Pulaski Chancery Court (y). *Ib.*, sec. 90, as amended 1871.

SEC. 5001. An action, other than one of those mentioned in sections 4994, 4995, 5000, against a person confined in the penitentiary or a lunatic asylum must be brought in the county in which he resided, or claimed his residence, prior to his confinement.

SEC. 5002. An action, other than those mentioned in sections 4994, 4995, 5000, against a corporation created by the laws of this state may be brought in the county in which it is situated or has its principal office or place of business, or in which its chief officer resides; but, if such corporation is a bank or insurance company, the action may be brought in the county in which there is a branch of the bank or agency of the company, where it arises out of a transaction of such branch or agency.

SEC. 5003. An action against a railroad company, or an owner of a line of mail-stages or other coaches, for an injury to person or property upon the road or line of stages or coaches of the defendant, or upon a liability as a carrier, may be brought in any county through or into which the road or line of stages or coaches of the defendant upon which the cause of action arose passes.

SEC. 5004. An action, other than one of those mentioned in sections 4994, 4995, 5000, against a turnpike-road company may be brought in any county in which any part of the road of the defendant lies.

SEC. 5005. An action, other than one of those mentioned in sections 4994, 4995, 5000, against a non-resident of this state, or a foreign corporation, may be brought in any county in which there may be property of or debts owing to the defendant (z). *Ib.*, secs. 91, 95.

SEC. 5006. All actions for debts due the State of Arkansas, and all actions in favor of any state officer, state board or commissioner, in their official capacity, and all actions which are authorized by law to be brought in the name of the state, and all actions against such board or commissioner or state officer, for or on account of any official act done or omitted to be done, shall be brought and prosecuted in the county where the defendant resides. *Provided*, that this section shall not affect suits authorized by law to be brought in the Pulaski Chancery Court (aa). *Ib.*, sec. 484, as amended 1871.

(x) See SECS. 158, 163, 171, 188.

(y) For actions authorized to be brought in that court, see SEC. 5410.

(z) Actions in which attachments may be sued out may be prosecuted in any county in which property may be attached. SEC. 316.

(aa) See SEC. 5410.

SEC. 5007. Every other action may be brought in any county in which the defendant, or one of several defendants, resides, or is summoned (bb).

SEC. 5008. Where any action embraced in the preceding section is against a single defendant, the plaintiff shall not be entitled to judgment against him on the service of a summons in any other county than that in which the action is brought, unless he resided in that county at the commencement of the action, or unless, having appeared therein, he fails to object, before the trial, to its proceeding against him.

SEC. 5009. Where any action embraced in section 5007 is against several defendants, the plaintiff shall not be entitled to judgment against any of them on the service of a summons in any other county than that in which the action is brought, where no one of the defendants is summoned in that county or resided therein at the commencement of the action, or where, if any of them resided, or were summoned in that county, the action is discontinued or dismissed as to them, or judgment therein is rendered in their favor, unless the defendant summoned in another county, having appeared in the action, failed to object before the judgment to its proceeding against him.

SEC. 5010. The objection that one of several defendants was summoned in another county, if he appears, shall be deemed to be waived, unless it is made before judgment as to him.

SEC. 5011. If, after the commencement of an action in the county of the defendant's residence, he removes therefrom, the service of a summons upon him in any other county shall have the same effect as if it had been made in the county from which he removed. *Ib.*, sec. 96-100.

SEC. 5012. Any action required by law to be brought in the name of the state against any corporation, or to vacate or repeal any charter, may be brought in any county in the state before any court having jurisdiction of such action.

SEC. 5013. Service of process in any such action may be made in any county in the state upon any defendant to such action in like manner as is now or may hereafter be provided by law in other cases, and any such defendant shall be required to appear and defend such action in the county where the same may be commenced. *Act Nov. 8, 1875.*

JOINDER AND CONSOLIDATION OF ACTIONS.

SEC. 5014. Several causes of action may be united in the same complaint, where each affects all the parties to the action, may be brought in the same county, be prosecuted by the same kind of proceedings, and all belong to one of the following classes:

First. Claims arising out of contract, express or implied.

Second. Claims for the recovery of specific real property, and the rents, profits and damages for withholding the same.

Third. Claims for the recovery of specific personal property, and damages for the taking or withholding the same.

Fourth. Claims for partition of real or personal property, or both.

Fifth. Claims arising from injuries to character.

(bb) An action for divorce shall be brought "in the county where the complainant resides." SEC. 2558. A witness is not liable to be sued in a county in which he does not reside. SEC. 2893.

Sixth. Claims arising from injuries to person and property.

Seventh. Claims against a trustee by virtue of a contract or by operation of law (cc).

SEC. 5015. The plaintiff may strike from his complaint any cause of action, at any time before the final submission of the case to the jury or to the court, where the trial is by the court.

SEC. 5016. The court at any time before the defense shall, on motion of the defendant, strike out of the complaint any cause, or causes of action, improperly joined with others (dd).

SEC. 5017. All objections to the misjoinder of causes of action shall be deemed to be waived, unless made as provided in the last section; and all errors in the decisions of the court thereon are waived, unless excepted to at the time. *Ib.*, *secs.* 101-104.

SEC. 5018. Whenever several suits shall be pending in the same court by the same plaintiff against the same defendant, for causes of action which may be joined, or where several suits are pending in the same court by the same plaintiff against several defendants, which may be joined, the court in which the same may be prosecuted may, in its discretion, order such suits to be consolidated into one action (ee).

SEC. 5019. When any plaintiff shall bring in the same court several suits against the same defendant or defendants, for causes of action that may be joined, the plaintiff shall recover only the costs of one action; and the costs of the other actions shall be adjudged against him, unless sufficient reason appear to the court for bringing several actions. *Rev. Stat.*, chap. 116, *secs.* 132, 133.

PLEADINGS.

General Provisions.

SEC. 5020. The pleadings are the written statements, by the parties, of the facts constituting their respective claims and defenses.

SEC. 5021. The forms of pleadings in civil actions and suits heretofore existing are abolished; and hereafter the forms of pleadings in civil actions, and the rules by which their sufficiency is to be determined, are those prescribed in the code.

SEC. 5022. The only pleadings allowed are:

First. The complaint by the plaintiff.

Second. The demurrer, or answer, by the defendant.

Third. The demurrer, or reply, by the plaintiff.

SEC. 5023. A defendant may file a cross-complaint against persons other than the plaintiff, and have proceedings thereon, as follows:

First. When a defendant has a cause of action against a co-defendant, or a person not a party to the action, and affecting the subject-matter of the action,

(cc) Former actions of case and trespass may be joined. *Chrisman v. Carney*, 33-316. In a suit to enforce a mechanic's lien, plaintiff may have a judgment *in personam*. *Brugman v. McGuire*, 32-733.

(dd) Multifariousness no ground of demurrer. *Clements v. Lumkin*, 34-598. If there is no motion to strike out, the error is waived. *Terry v. Rozell*, 32-495; *Riley v. Norman*, 39-158. A paragraph in a complaint introducing an unnecessary party may be stricken out. *Lyman v. Corwin*, 27-582.

(ee) *Lindsay v. Wayland*, 17-385.

he may make his answer a cross-complaint against the co-defendant or other person.

Second. The defendant to such cross-complaint may be actually or constructively summoned, and defense thereto shall be made in the time and manner prescribed in regard to the original complaint, and with the same rights of obtaining provisional remedies applicable to the case.

Third. The filing and prosecution of the cross-complaint shall not delay the trial and decision of the original action when a judgment can be rendered therein that will not prejudice the rights of the parties to the cross-complaint. *Civil Code, secs. 105-108 (ff).*

Issues.

SEC. 5024. Issues arise upon the pleadings where a fact or conclusion of law is maintained by the one party and controverted by the other.

They are of two kinds:

First. Of law.

Second. Of fact.

SEC. 5025. An issue of law arises:

First. Upon a demurrer to the complaint, answer or reply, or to some part thereof.

An issue of fact arises:

First. Upon a material allegation in the complaint denied by the answer.

Second. Upon a set-off or counter-claim presented in the answer, and denied by the reply.

Third. Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

Issues both of law and fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law must be first tried, unless the court otherwise direct. *Ib., secs. 334, 335, as amended 1871.*

Complaint.

SEC. 5026. The first pleading by the plaintiff is the complaint. The complaint must contain:

First. The style of the court in which the action is brought.

Second. The style of the action, consisting of the names of all the parties thereto, distinguishing them as plaintiffs and defendants, followed by the words "complaint at law," if the proceedings are at law, and by the words "complaint in equity," if the proceedings are equitable.

Third. A statement in ordinary and concise language, without repetition, of the facts constituting the plaintiff's cause of action.

Fourth. A demand of the relief to which the plaintiff considers himself entitled (gg).

(ff) On overruling a demurrer to a cross-complaint the defendant in it should be allowed to answer. *Campbell v. Savage*, 33-678. In a suit in equity a purely legal demand can not be set up in a cross-complaint. *Trapnall v. Hill*, 31-345. A cross-complaint must relate to matters in original complaint. *Ib.*

(gg) Sufficiency of complaint can not be questioned for the first time on appeal. *Cohn v. Hager*, 30-25. Defects in the complaint may be supplied by averments in the answer. *Pindall v. Traver*, 30-249. And in such case the complaint need not be amended. *Webb v. Davis*, 37-555; *Davis v. Hare*, 32-386. The omission of the style of the court is no ground of error. *McLeran v. Morgan*, 27-148. When the names of the parties are set out in the margin, they need not be repeated in the body of the complaint. *Ib.*

SEC. 5027. Where the complaint contains more than one cause of action, each shall be distinctly stated in a separate paragraph, and numbered.

Demurrer.

SEC. 5028. The defendant may demur to the complaint where it appears on its face, either:

First. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

Second. That the plaintiff has not legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect of parties, plaintiff or defendant; or,

Fifth. That the complaint does not state facts sufficient to constitute a cause of action (hh).

SEC. 5029. The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so, it shall be regarded as objecting only that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 5030. If the court sustains the demurrer, the plaintiff may amend, with or without costs, as the court may order.

SEC. 5031. When any of the matters enumerated in section 5028 do not appear upon the face of the complaint, the objection may be taken by answer. If no such objection is taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court over the subject of the action, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 5032. The defendant may demur to one or more of the several causes of action alleged in the complaint, and answer as to the residue. *Ib.*, secs. 109-115.

Answer.

SEC. 5033. The answer shall contain:

First. The style of the court and the style of the action, followed by the word "answer." But where there are several plaintiffs and defendants, it shall only be necessary to give the one first named of each class, with the words "and others."

Second. A denial of each allegation of the complaint controverted by the defendant, or of any knowledge or information thereof, sufficient to form a belief.

Third. A statement of any new matter constituting a defense, counterclaim or set-off, in ordinary and concise language, without repetition (ii).

(hh) Demurrer may be filed with answer in vacation. See SECS. 5052, 5053. A general demurrer does not raise the question of a defect of parties. *Eagle v. Beard*, 33-497. A demurrer to several paragraphs should be overruled, unless all are bad. *Cairo R. R. Co. v. Parks*, 32-131; *Warner v. Capps*, 37-34. A demurrer to an answer relates back to the complaint. *Bruce v. Benedict*, 31-301. Neither a defective description of land, nor a failure to file a copy of a deed, is ground of demurrer. *Henry v. Blackburn*, 32-446. Nor a defense defectively stated; the party should move to make more specific. *Bushey v. Reynolds*, 31-657; *Ball v. Fulton Co.*, *Ib.*, 379. The sufficiency of a pleading must be raised by a demurrer, and not by a motion to strike out. *Goodwin v. Robinson*, 30-536.

Multifariousness can not be corrected by demurrer, but only by motion to strike out. *Dyer v. Jacoway*, 42-186.

(ii) Denials must be direct. *Young v. Mitchell*, 33-222. An answer averring fraudulent representations should state what they were. *Callin v. Horne*, 34-169. Pleadings in abatement are abolished. *Griener v. Apperson*,

Fourth. The defendant may set forth in his answer as many grounds of defense, counter-claim and set-off, whether legal or equitable, as he shall have. Each shall be distinctly stated in a separate paragraph, and numbered. The several defenses must refer to the causes of action which they are intended to answer in a manner by which they may be intelligibly distinguished (jj).

SEC. 5034. The counter-claim mentioned in this chapter must be a cause of action in favor of the defendants, or some of them, against the plaintiffs or some of them, arising out of the contract or transactions set forth in the complaint, as the foundation of the plaintiff's claim or connected with the subject of the action.

SEC. 5035. When it appears that a new party is necessary to a final decision upon the counter-claim, the court may either permit the new party to be made, by a summons, to reply to the counter-claim in the answer, or may direct that it be stricken out of the answer and made the subject of a separate action. *Ib.*, secs. 116-118.

SEC. 5036. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract or ascertained by the decision of a court. *Ib.*, sec. 119.

SEC. 5037. In suits by executors or administrators, debts existing against their testators or intestates, and owing to the defendant at the time of the death of the testator or intestate, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased.

SEC. 5038. Judgments, bills, bonds, notes or other writings assigned to the defendant after suit has been commenced against him and the writ served shall not be allowed to be set off against the demands of the plaintiff.

SEC. 5039. When any plaintiff shall be indebted to a defendant in any bond, bill, note, contract, book account, or other liquidated demand, and the defendant shall fail to set off such debt against the plaintiff's demand, such defendant shall be forever barred from recovering costs in any suit which he may thereafter institute upon any such bond, bill, note, contract, book account, or other liquidated demand. *Rev. Stat., chap. 139, secs. 2, 3 and 7.*

SEC. 5040. Where it appears that a new party is necessary to a final decision upon the set-off, the court shall permit the new party to be made, if it also appears that, owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off.

32-332. Matters in abatement and bar may be pleaded together. *Erb v. Perkins, Ib.*, 428. Each paragraph must state facts that will bar a recovery. *Cairo R. R. Co. v. Parks*, 32-131; *Norman v. Rogers*, 29-365. If all the paragraphs taken together show a defense, a demurrer to them should be overruled. *Ib.* So where demurrer is to whole answer and any paragraph is good. *Cairo R. R. Co. v. Parks, Ubi. Sup.* An answer is not evidence. *Gerson v. Pool*, 31-85; *Conger v. Cotton*, 37-295. General denials are not sufficient, but they are cured by verdict. *Tyner v. Hays*, 37-603. But a plea of *nil debet* is a nullity. *Lawrence v. Meyer*, 35-105. But see *Fain v. Goodwin, Ib.*, 110. It is not sufficient to plead fraud generally. *McIlroy v. Buckner, Ib.*, 555.

(jj) Though plaintiff dismiss, defendant may proceed with his counter-claim. See SEC. 5166. Defendant can have no affirmative relief unless he files a counter-claim. *Marr v. Lewis*, 31-203. The counter-claim must grow out of the contract sued on. *Bloom v. Lehman*, 27-489; *Hudson v. Snipes*, 40-75. Debts to be set off must be due to and from the same parties. *Collier v. Dyer*, 27-478. In a suit on a contract damages can not be set off. *Bloom v. Lehman, Ubi. Sup.*; *Gerson v. Semmons*, 30-50. A debt due from the plaintiff to one of several defendants may be set off. *Leach v. Lambeth*, 14-668. But not when one of several plaintiffs owes the defendant. *Collier v. Dyer*, 27-478. A debt contracted by an intestate can not be set off against one contracted with his administrator. *Bizzell v. Stone*, 12-378; *Biscoe v. Moore, Ib.*, 77. As to judgment in probate court being set off, see *Higgs v. Warner*, 14-192.

SEC. 5041. Where the facts stated in the answer are not sufficient to constitute a defense, counter-claim or set-off, the plaintiff may demur.

SEC. 5042. It shall be the duty of the guardian of an infant or person of unsound mind, or attorney appointed for a prisoner, to file an answer denying the material allegations of the complaint prejudicial to such defendant. *Civil Code, secs. 120-122 (kk).*

Reply.

SEC. 5043. There shall be no reply, except upon the allegation of a counter-claim or set-off in the answer.

SEC. 5044. When the answer contains new matter constituting a counter-claim or set-off, the plaintiff may reply to such new matter, denying each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief, and may allege, in concise language, any new matter not inconsistent with the complaint, constituting a defense to the counter-claim or set-off (ll).

SEC. 5045. When the facts stated in the reply do not amount to a sufficient defense, the defendant may demur. *Ib., secs. 123-125.*

TIME OF PLEADING.

SEC. 5046. The defense to an action at law shall be filed on or before the third day of the term:

First. When the summons has been served ten days before the commencement of the term in the county in which the action is brought, or in an adjoining county.

Second. When it has been served twenty days elsewhere in the state, or sixty days out of the state.

Third. Where the defendant has been constructively summoned thirty days (mm). *Ib., sec. 126, as amended by act March 22, 1881.*

SEC. 5047. The reply shall be filed on or before the calling of the cause for trial.

SEC. 5048. In an action prosecuted by equitable proceedings, the defense must be filed on the third day of the term:

First. Where the summons has been served twenty days before the commencement of the term, in the county in which the action is brought, or an adjoining county.

Second. Where it has been served thirty days elsewhere in the state, or sixty days out of the state; or,

Third. Where the defendant has been constructively summoned thirty days.

SEC. 5049. Where the service of the summons was before the commencement of the term, but not the length of time mentioned in the last section, the defense shall be filed in thirty days after the service.

(kk) See SECS. 4957-4959, 4962, 4966; *Freeman v. Russell*, 40-56; and note to SEC. 4957.

(ll) A reply improperly filed should be stricken out. *Cannon v. Davies*, 33-56; *Abbott v. Rowan*, *Ib.*, 593. As to set-off and counter-claim, see note to SEC. 5033.

(mm) The court may extend the time. *Mayes v. Hendry*, 33-240; *Simms v. Richardson*, 32-304. As to service out of the state, see SECS. 4967, 4968.

SEC. 5050. If the answer in equitable proceedings contains a counter-claim or set-off, the plaintiff shall reply within twenty days after the answer is filed, or ninety days before the ensuing term.

SEC. 5051. The court may, for good cause shown, extend the time for filing an answer or reply to some subsequent day in that or the next succeeding term, the party applying for the delay paying the costs occasioned thereby.

SEC. 5052. A party may file a demurrer with his answer or reply (nn).

SEC. 5053. The filing of a demurrer, answer or reply in the clerk's office in vacation within the time allowed, with notice thereof to the opposite party or his attorney, shall be equivalent to a filing in court as of that date.

SEC. 5054. When a party files a demurrer with his answer or reply, the demurrer must be presented for the consideration of the court at or before the first calling of the cause for trial after the filing of the same. If he fails to do so, the demurrer shall be regarded as waived as to all points, except the jurisdiction of the court, and that the pleading demurred to does not state facts sufficient to constitute a cause of action or a defense, counter-claim or set-off. *Ib.*, secs. 127-134.

VERIFICATION OF PLEADINGS (oo).

SEC. 5055. Every pleading must be subscribed by the party or his attorney, and the complaint, answer and reply must each be verified by the affidavit of the party to the effect that he believes the statements thereof to be true; such verification shall not make other or greater proof necessary on the side of the adverse party.

SEC. 5056. The verification of any pleading of a corporation may be by any officer or agent on whom the summons in an action against the corporation may be served, or by its attorney in the action. *Ib.*, sec. 135.

SEC. 5057. Where there are several plaintiffs the verification of the complaint or reply may be made by any of them, if he has personal knowledge of the facts set forth therein; and, when several defendants unite in the same answer and defense, the verification may be by either of them, if the defendant verifying the same shall, when he is materially interested, make oath that the facts and statements contained in such answer and defense are true to his own knowledge or belief.

SEC. 5058. In equitable actions the material allegations of the answer must be verified by each defendant, unless the party making the same shall verify the answer or defense in the manner provided in the preceding section. *Ib.*, sec. 792, as amended 1873.

SEC. 5059. Verification shall not be required to the answer of a guardian defending for an infant or person of unsound mind, or imprisoned; nor in any case where the admission of the truth of the allegations of the complaint or answer might subject the party to a criminal or penal prosecution; nor to pleadings affecting injuries to person or character; nor to complaints in actions founded on a note, bond, bill of exchange, mortgage or other written obligation of the defendant; nor to defenses founded on the written obligation, release or

(nn) This is true, though the answer go to the whole complaint. *Greenfield v. Carlton*, 30-547.

(oo) As to dismissing for want of verification, see SEC. 5086. The state need not verify her pleadings. SECS. 6383, 6472. Want of verification can not be raised for the first time on appeal. *Payne v. Flournoy*, 29-500. See SECS. 5086, 5087.

written acknowledgment of the plaintiff, unless the writing on which the action or defense is founded is lost, mutilated or destroyed; nor to the petition or answer in cases of proceedings for the partition of land or the allotment of dower. *Ib.*, secs. 136, 548.

SEC. 5060. Whenever the affidavit of the plaintiff or defendant is required to verify a pleading, to obtain a warning order, a provisional remedy, or any other order in an action, or on a motion or proceeding therein, it may, unless otherwise expressed, be made by the agent or attorney of the party, if the party is absent from the county, or is mentally incapable of taking an oath, or is physically unable to attend before the court or officer for the purpose of making the affidavit, in which case the affidavit shall state the reason, and that the affiant is the agent or attorney of the party. *Ib.*, sec. 603.

SEC. 5061. Whenever any such pleading shall be verified by the agent or attorney of either party for any of the foregoing reasons, except the mental incapacity of the party, the opposing party may make an affidavit that he does not believe that the party, whose agent or attorney verified such pleading or affidavit, can truthfully verify the same with his own oath, and that the matters therein alleged are within the personal knowledge of such party. Upon the filing of such affidavit it shall be the duty of the court to compel such party to verify said affidavit or pleading in person, reasonable time therefor being given. On failure of such party to make such verification, it shall be the duty of the court to dismiss the complaint, suppress the answer, reply or affidavit, and render judgment accordingly, unless amended pleadings or affidavit shall be filed and properly verified by the party in person. *Ib.*, sec. 604.

RULES FOR PLEADING.

SEC. 5062. Neither presumptions of law nor matter of which judicial notice is taken need be stated in a pleading. *Ib.*, sec. 137.

SEC. 5063. If the action, counter-claim or set-off is founded on a note, bond, bill or other writing as evidence of indebtedness, the original, or a copy thereof, must be filed as part of the pleading, if in the power of the party to produce it. If not filed, the reason thereof must be stated in the pleading. If upon an account, a copy thereof must, in like manner, be filed with the pleading (pp). *Ib.*, sec. 138, as amended 1871.

SEC. 5064. If either party shall rely upon any deed or other writing, he shall file with his pleading the original deed or writing, if in his power, or a copy thereof. If he can not procure such deed or writing, or a copy thereof, he shall so state in his pleading, together with the reasons therefor; and, if such reasons are sufficient, he may file the best evidence of the contents of such deed or writing in his power. Original deeds and other writings, filed by either

(pp) As to when writing filed with the pleading may be read, see SEC. 2872. A failure to file writing is no ground of demurrer. *Nordman v. Craighead*, 27—369; *Surginer v. Paddock*, 31—529; *Henry v. Blackburn*, 32—446. The substance of the writing should be stated in the pleadings. *Ib.* Where a copy has been filed the court may still compel the filing of the original. *Weaver v. Carnall*, 35—208; *Egan v. Tewkesbury*, 32—43. In suit for personal property claimed under mortgage, the mortgage is no part of the complaint, though filed with it. *Chamblee v. Stokes*, 33—543. An instrument filed, not the foundation of the action, can not be noticed on demurrer. *Abbott v. Rowan*, *Ib.*, 593. In chancery, an exhibit is a part of the record, and, if it is the foundation of the suit, it will explain, and even control, the averments in the complaint. *Beavers v. Baucum*, *Ib.*, 722. Copies of deeds filed with the pleadings are no part of the pleadings or of the evidence. *Richardson v. Williams*, 37—542.

party, shall remain on file for the inspection of the other party until allowed by the court to be withdrawn, and in such cases copies, attested by the clerk, shall be substituted by the parties withdrawing the original. *Ib.*, sec. 148, as amended 1871.

SEC. 5065. In construing a pleading for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties (†).

SEC. 5066. If irrelevant or redundant matter is inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby, at the cost of the party whose pleading contained it.

SEC. 5067. In pleading a judgment or other determination of the court, or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is made in a complaint, and is not controverted in the answer, or made in the answer in relation to a counter-claim or set-off, and is not controverted in the reply, it need not be proved on the trial.

SEC. 5068. In pleading the performance of a condition precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and, if such an allegation is not controverted as stated in the last section in regard to judgments, it shall not be necessary to prove it on trial.

SEC. 5069. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation is not controverted as stated in section 5067 in regard to judgments, it shall not be necessary to prove it on trial.

SEC. 5070. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, legally admissible in evidence, to reduce the amount of damages, and, whether he proves the justification or not, he may give in evidence the mitigating circumstances.

SEC. 5071. In an action for the recovery of real property, it must be described in the complaint with such convenient certainty as to enable an officer holding an execution to identify it.

SEC. 5072. Every material allegation of the complaint not specifically controverted by the answer, and every material allegation of new matter in the answer constituting a counter-claim or set-off not specifically controverted by the reply, must, for the purposes of the action, be taken as true (‡). But the allegation of new matter in the answer not relating to a counter-claim or set-off, or of new matter in a reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require. Allegations of value, or of amount of damage, shall not be considered as true by the failure to controvert them.

SEC. 5073. A material allegation in a pleading is one essential to the claim

(†) See *Bushey v. Reynolds*, 31—657.

(‡) See *Stafford v. Watson*, 41—17.

or defense, and which could not be stricken from the pleading without leaving it insufficient. *Ib.*, *secs.* 139-147.

SEC. 5074. In actions founded upon a note, bond, bill of exchange, mortgage or other written obligation of the defendants, or any of them, the plaintiff may file with his complaint the affidavit of himself, or his agent or attorney, to the effect that affiant verily believes that there is no good and valid defense to said action upon the merits, and that if defense is made thereto it will be made for the purpose of delay merely; whereupon the court shall not allow an answer to be filed in said action, or, if filed, shall strike out the same, unless it be accompanied with an affidavit to the effect that the affiant verily believes that there is a good and valid defense to said action upon the merits thereof. *Provided*, that such affidavit shall not dispense with any verification required in other cases. *And, provided, further*, that if such defendant should fail to establish his defense to the merits of said case, the clerk shall tax against him a docket fee for double the amount allowed in other like actions. *Ib.*, *sec.* 149.

AMENDMENTS (qq).

SEC. 5075. No variance between the allegation in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be shown to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as may be just.

SEC. 5076. Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs.

SEC. 5077. Where, however, the allegation of the claim or defense, to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

(qq) The court may permit a substituted answer to be filed during the trial. *Jetton v. Sneed*, 29-372. A mistake in the name of a party may be corrected. *Beavers v. Baucum*, 33-722. A complaint may be amended after answer. *Cross v. Johnson*, 30-396. An answer that is indefinite may be amended after verdict, so as to conform to proof. *Trippe v. Duval*, 33-811. A mistake in a verdict should be corrected so as to conform to the real intent of the jury. *Woodruff v. Webb*, 32-613. Failure to allege value is cured by verdict. *Jefferson v. Hale*, 31-286. A defective complaint, showing merits, should not be dismissed without giving leave to amend. *Palmer v. Rankins*, 30-771; *Buckner v. Sessions*, 27-225. Where no objection is made to evidence, the complaint must be considered as if amended so as to conform to it. *Hanks v. Harris*, 29-323; *Healy v. Conner*, 40-352. A suit should not be dismissed for want of parties, if plaintiff will amend. *Benjamin v. Loughborough*, 31-210. A complaint and an amendment to it form but one paper. *Holland v. Rogers*, 33-251. Save where grossly abused, the discretion of the circuit court as to amendments will not be controlled. *Ford v. Ward*, 26-360. One claiming to have been misled by an amendment must show in what manner. *King v. Caldwell*, *Ib.*, 405. An amendment inconsistent with original pleading should be accompanied with an explanatory affidavit. *Reynolds v. West*, 32-244. After an answer has been held bad, an amended answer raising the same issue may be stricken from the files. *Goodwin v. Robinson*, 30-535. Where a complaint shows that the plaintiff has no cause of action, it can not be amended by making others plaintiffs who have. *State v. Rottakin*, 34-144. A summons against a firm may be amended by inserting the names of the partners. *Martin v. Goodwin*, 34-682. And a summons may be amended by showing the representative character of the defendant. *Richardson v. Hickman*, 32-406. A writ of forcible detainer may be amended by inserting the names of the parties. *Galbreath v. Mitchell*, 32-278. A return on a summons may be amended even after an appeal. *St. Louis Railway Co. v. Yorum*, 34-493.

Additional pleadings to correspond with the issues established by the evidence may be filed after the case has been argued to the jury. *Burk v. Snell*, 42-57. See also *Gainus v. Cannon*, *Ib.*, 503.

SEC. 5078. The plaintiff may amend his complaint without leave at any time before an answer is filed, and without prejudice to the proceedings already had.

SEC. 5079. Upon a demurrer being overruled, the party demurring may answer or reply.

SEC. 5080. The court may, at any time, in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case; or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved.

SEC. 5081. The court may likewise, in its discretion, allow an answer or reply to be made after the time limited by law, or by an order enlarge such time. And whenever any proceeding taken by a party fails to conform in any respect to the requirements of the law, the court may permit an amendment of such proceedings, so as to make it conformable thereto.

SEC. 5082. When the allegations of a pleading are so indefinite or uncertain that the precise nature of the claim or defense is not apparent, the court may require the pleading to be made definite and certain by amendment (rr).

SEC. 5083. The court must, in every stage of an action, disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

SEC. 5084. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint, answer or reply, alleging facts material to the case occurring after the filing of the former complaint, answer or reply.

SEC. 5085. When either party shall amend any pleading or proceeding, and the court shall be satisfied by affidavit or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in the same term, or to another term of the court.

SEC. 5086. Where complaints are filed without verification, as required by section 5055, the action shall not on that account be dismissed, if the verification be made on or before the calling of the action for trial.

SEC. 5087. No objection shall be taken after judgment to any pleading for the want of, or defect in, the verification.

SEC. 5088. Courts may permit amendments to be made without being verified, as prescribed in section 5055, unless a new and distinct cause of action or defense is thereby produced (ss). *Ib.*, secs. 150-160.

INTERROGATORIES.

SEC. 5089. In actions by equitable proceedings either party may annex to his complaint, answer or reply written interrogatories to any one or more of the adverse parties concerning any of the material matters in issue in the action; the answers to which, on oath, may be read by either party, as a deposition between the party interrogating and the party answering.

(rr) The court may require a bill of particulars to be filed. *Walker v. Fuller*, 23-443.

(ss) See *Halliburton v. Nance*, 40-161.

SEC. 5090. The party answering shall not be confined to responding merely to the interrogatories, but may state any new matter concerning the same cause of action, which shall likewise be read as a deposition. *Ib.*, *secs.* 161-162.

SEC. 5091. In actions by equitable proceedings, if a party in answering interrogatories states new matters not responsive to the inquiries, the party interrogating may, before the trial, file his written statement, under oath, concerning such new matters, which shall be read as a deposition. *Ib.*, *sec.* 665.

SEC. 5092. Where the interrogatories are annexed to the complaint, they shall be answered at the same time the party is required to answer the complaint; where annexed to the answer or reply, then in twenty days after notice shall be given thereof to the adverse party or his attorney; but if answered twenty days before the term at which the action stands regularly for trial, the action shall not be postponed on account of their not being sooner answered.

SEC. 5093. In actions by proceedings at law either party may, in like manner, annex written interrogatories to his complaint, answer or reply, directed to any one or more of the adverse parties concerning any material matter in issue in the action in the following cases:

First. Where the party interrogated does not reside in the same or an adjoining county.

Second. Where the party interrogated is unable to attend court on account of age, infirmity or imprisonment, or is a female.

SEC. 5094. Where the interrogatories in an action by proceedings at law are annexed to the complaint, they shall be answered at the same time the complaint is required to be answered; where annexed to the answer or reply, at or before the calling of the cause for trial, where the party interrogated had reasonable notice of their being filed.

SEC. 5095. The trial of an action by proceedings at law shall not be postponed on account of the failure to answer the interrogatories, if the party interrogated is present in court at the trial, so that he may be orally examined; nor in case of his absence, without an affidavit showing the facts the party believes will be proved by the answers thereto, and that the party has not filed the interrogatories, nor omitted to file them, for the purpose of delay. Whereupon, if the party will consent that the facts stated in the affidavit shall be considered as admitted by those interrogated, the trial shall not be postponed for that cause.

SEC. 5096. The provisions of section 5090 shall apply to the answers to interrogatories in actions by proceedings at law.

SEC. 5097. The party in answering such interrogatories shall distinguish clearly between what is stated from his personal knowledge and what is stated from information or belief merely. An unqualified statement of a fact shall be considered as made of his personal knowledge.

SEC. 5098. The answer to the interrogatories shall be verified by the affidavit of the party answering, to the effect that the statements in them made of his own personal knowledge are true, and those made from the information of others he believes to be true.

SEC. 5099. Where the party resides in the same or an adjoining county, he may be summoned by the adverse party, and compelled to testify on the trial of an action by proceedings at law as any other witness.

SEC. 5100. Where a party filing interrogatories shall also file an affidavit that he verily believes the subject of the interrogatories, or any of them, is in the personal knowledge of the opposite party, and that his answers thereto, if truly made from such knowledge, will sustain the claim or defense, or any part thereof, and the opposite party shall fail, after reasonable time allowed therefor to answer them, the claim or defense, or the part thereof, according to such affidavit, shall be deemed to be sustained and judgment given accordingly.

SEC. 5101. The court may compel answers to interrogatories by process of contempt, and may on the failure of the party to answer them, after reasonable time allowed therefor, dismiss the complaint or quash the answer of the party so failing. *Ib.*, secs. 163-172.

ACTIONS MAY BE DISMISSED.

By the Court—By the Plaintiff.

SEC. 5102. An action may be dismissed without prejudice to a future action:

First. By the plaintiff before the final submission of the case to the jury, or to the court, where the trial is by the court.

Second. By the court where the plaintiff fails to appear on the trial.

Third. By the court for the want of necessary parties.

Fourth. By the court on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

Fifth. By the court for disobedience by the plaintiff of an order concerning the proceedings in the action.

In all other cases, upon the trial of the action, the decision must be upon the merits. *Ib.*, sec. 402.

SEC. 5103. The plaintiff may dismiss any action in vacation, in the office of the clerk, on the payment of all costs that may have accrued therein, except an action to recover the possession of specific personal property, when the property has been delivered to the plaintiff(tt). *Rev. Stat.*, chap. 116, sec. 134.

TRIAL.

General Provisions.

SEC. 5104. A trial is a judicial examination of the issues, whether of law or of fact, in an action.

SEC. 5105. Issues of law must be tried by the court. Issues of fact, arising in actions by proceedings at law for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived.

SEC. 5106. All other issues of fact, whether arising in proceedings at law or equitable proceedings, shall be tried by the court, subject to its power to order any issue or issues to be tried by jury(uu).

(tt) A non-suit taken before a clerk in vacation, on payment of costs, is authorized by the statute. *State Bank v. Gray*, 12-760.

Though plaintiff dismiss his action, the defendant may proceed to the trial of his set-off or counterclaim. SEC. 5106.

(uu) In contested elections issues are to be tried by the court. *Wise v. Martin*, 36-306; *Govan v. Jackson*, 33-762.

SEC. 5107. The trial in each action shall be in the order in which it stands upon the docket. *Civil Code, secs. 336-339.*

CONTINUANCE.

SEC. 5108. A motion to postpone a trial on account of the absence of evidence shall, if required by the opposite party, be made only upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it; and, if it is for an absent witness, the affidavit must show what facts the affiant believes the witness will prove, and not merely the effect of such facts in evidence, and that the affiant himself believes them to be true. If, thereupon, the adverse party will admit that on the trial the absent witness, if present, would testify to the statement contained in the application for a continuance, then the trial shall not be postponed for that cause; *provided*, the opposite party may controvert the statement so set forth in the said motion for continuance by evidence (vv). *Ib., sec. 340, as amended by act March 5, 1879.*

SEC. 5109. When a case shall have been reversed and remanded by the supreme court for further proceedings, it may be continued at the first term, unless the mandate shall have been filed with the clerk of the court below and reasonable notice given to the adverse party, or his attorney of record, before the commencement of the term, in which case it shall stand for trial, unless good cause for a continuance be shown. *Ib., sec. 884, as amended 1873.*

SEC. 5110. No order of continuance shall take effect until the party upon whose application it was granted shall have paid or secured the payment of all costs of the action due for the term in which such continuance shall be granted. *Ib., sec. 775, as amended 1871.*

Dockets and Order of Business.

SEC. 5111. The clerk shall keep three separate dockets, which shall be called the "law docket," the "equity docket" and the "motion docket."

SEC. 5112. On the law docket shall be entered all actions prosecuted by proceedings at law, in the order in which they were brought.

SEC. 5113. The law docket shall be made out for each term of the court, and the actions shall be set for particular days, and so arranged by the clerk that the cases set for each day shall be tried, as nearly as may be, on that day.

SEC. 5114. The trial of any issue of fact or assessment of damages by a jury, in any case, shall be on or after the day which it is set on the docket.

SEC. 5115. On the equity docket shall be entered all actions prosecuted by equitable proceedings in the order in which they were brought. *Ib., secs. 378-382.*

SEC. 5116. On the motion docket may be entered any motion relating to proceedings in the court, and such entry shall be considered as making the motion. *Ib., secs. 383 and 393.*

SEC. 5117. The entry on all the dockets shall give the names of the plaintiff and defendant, or, if there be more than one, then of the first named in

(vv) See *Hibbard v. Kirby*, 38-102. A motion for a continuance by a defendant should not be made before filing answer. *Winter v. Bandel*, 30-362.

the pleadings, with the words "and others" added thereto, and the names of the attorneys.

SEC. 5118. The entry on the law docket shall also show whether or not the summons has been fully served in due time for trial, and whether or not the issue has been formed (ww).

SEC. 5119. The entry on the motion docket shall show the date of the entry and the object of the motion.

SEC. 5120. The first hour of each day of the term shall be devoted to hearing motions, in which the court shall first call the motion docket, and then upon the attorneys present, for motions.

SEC. 5121. If the hour is not consumed in motions, the court may proceed, during the remainder thereof, to call the equity docket.

SEC. 5122. At the expiration of the motion hour the court, except on the third day of the term, shall proceed to the call of the law docket and the trial of the issues until the call is completed, and then to the call of the equity docket.

TIME AND ORDER OF TRIAL.

SEC. 5123. On the fourth day of the term the court shall render judgment by default in all actions at law wherein due service has been had as provided in section 5046, and no defense has been filed (§); *provided*, the court may, for good cause, allow further time for filing a defense. *Ib.*, sec. 390, as amended by act March 22, 1881.

SEC. 5124. On the third day of each term the court shall call all cases on the equity docket in which the summons has been served as provided in section 5048, and, upon failure to defend, may give judgment. *Ib.*, sec. 391.

SEC. 5125. Actions by proceedings at law shall stand for trial at the first term after process has been served on the defendant as specified in section 5046.

SEC. 5126. An action upon contract, wherein the summons has been served in due time, as provided in section 5046, upon part only of the defendants, shall stand for trial at the first term as to those so summoned, and may be continued as to the others for further proceedings. In other actions by proceedings at law the plaintiff can only demand a trial at any term as to part of the defendants, upon his discontinuing his action on the first day of such term as to the others.

SEC. 5127. Actions prosecuted by equitable proceedings shall stand for trial at any term, where the pleadings have been, or, by the provisions of sections 5048, 5049 and 5050, should have been, completed ninety days before the commencement of such term. But where they have not been so completed, though they should have been by those sections, the party in default, as to time, shall not be entitled to demand a trial.

SEC. 5128. Where interrogatories have been annexed to a pleading in an action by equitable proceedings, the party interrogated shall not be entitled to demand a trial, unless he has answered the interrogatories either within twenty days after they were filed, or twenty days before the term.

(ww) For further requirements in relation to such entry, see SEC. 551.

(§) See *Silver v. Luck*, 42—268.

A default admits only the allegations of the complaint, and if they are insufficient to support the judgment, it will be reversed. *Chaffin v. McFadden*, 41—42.

SEC. 5129. The plaintiff shall be entitled to a trial in actions by equitable proceedings at the first term after the summons has been served on all the defendants, as provided in section 5048, where no issue of fact is made by the pleadings, or where the plaintiff consents that the statements of the answer may be taken as true.

SEC. 5130. Where the summons in an action by equitable proceedings has been served in due time on part only of the defendants, the plaintiff may dismiss his action as to those not summoned, and proceed to trial as to the others, in all cases where he could have maintained his action against them without joining those not summoned (xx). *Ib.*, secs. 394-398.

TRIAL BY JURY.

SEC. 5131. When the jury (yy) has been sworn, the trial shall proceed in the following order, unless the court, for special reasons, otherwise directs:

First. The plaintiff must briefly state his claim, and the evidence by which he expects to sustain it.

Second. The defendant must then briefly state his defense, and the evidence he expects to offer in support of it.

Third. The party on whom rests the burden of proof (zz) in the whole action must first produce his evidence. The adverse party will then produce his evidence.

Fourth. The parties will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

Fifth. When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court, which instructions shall be reduced to writing if either party require it (aaa).

Sixth. The parties may then submit or argue the case to the jury. In the argument the party having the burden of proof shall have the opening and conclusion; and if, upon the demand of his adversary, he shall refuse to open and fully state the grounds upon which he claims a verdict, he shall be refused the conclusion. *Ib.*, sec. 349, as amended by act Dec. 15, 1875.

SEC. 5132. Whenever, in the opinion of the court, it is proper for the jury to have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed shall speak to them on any subject connected with the trial.

SEC. 5133. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in

(xx) All indorsers and makers of any instrument in writing for the payment of money may be sued together or separately. SEC. 482. And joint obligations have the same effect as joint and several obligations, and may be sued on and recoveries had thereon in like manner. SEC. 3900.

(yy) For qualifications and exemptions of jurors, see SECS. 3968-3975. For mode of selecting and summoning, see SECS. 3984, 3987.

For mode of impaneling, challenges to and oath of jury, see SECS. 4004-4015.

(zz) The party holding the affirmative of an issue must prove it. SEC. 2870. And as to party on whom the burden of proof lies, see SEC. 2871.

(aaa) See art. VII, sec. 23, Const.

some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

SEC. 5134. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they may be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person on any subject of the trial, and, during the trial, that it is their duty not to form or express an opinion thereon until the cause is finally submitted to them.

SEC. 5135. After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed as to any point of law arising in the case, they may request the officer to conduct them into court, where the information required shall be given in the presence of or after notice to the parties or their counsel.

SEC. 5136. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

SEC. 5137. In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately or at a future time, as the court may direct.

VERDICT.

SEC. 5138. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk and the verdict rendered by their foreman. When the verdict is announced either party may require the jury to be polled, which is done by the clerk or court asking each juror if it is his verdict. If any one answer in the negative, the jury must again be sent out for further deliberation.

SEC. 5139. The verdict shall be written, signed by the foreman and read by the court or clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again, but if no disagreement is expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case (bbb).

SEC. 5140. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant.

SEC. 5141. A special verdict is that by which the jury finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them, and they must be so presented as that nothing remains to the court but to draw from them conclusions of law.

(bbb) As to amendment of verdict, see *Woodruff v. Webb*, 32—613. As to defective verdict, see *Hanks v. Harris*, 29—324.

SEC. 5142. In all actions the jury, in their discretion, may render a general or special verdict, but may be required by the court, in any case in which they render a general verdict, to find specially upon particular questions of fact to be stated in writing. This special finding is to be recorded with the verdict (ccc).

SEC. 5143. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly (†).

SEC. 5144. When, by the verdict, either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

SEC. 5145. In actions for the recovery of specific personal property, the jury must assess the value of the property, as also the damages for the taking or detention, whenever, by their verdict, there will be a judgment for the recovery or return of the property (ddd). *Ib.*, secs. 350-362.

SEC. 5146. If, after a verdict shall be rendered in any action, either party die before judgment actually entered thereon, the court may, at any time during the term at which such verdict was rendered, enter final judgment (eee) in the names of the original parties. *Rev. Stat.*, chap. 1, sec. 11.

SEC. 5147. Nothing in the preceding section shall be construed to authorize the entry of the judgment against any party who may have died before a verdict actually rendered against him, notwithstanding he may have died on the first or any other day of the term at which such verdict may have been rendered; but such verdict shall be void. *Ib.*, sec. 12.

TRIAL BY THE COURT.

SEC. 5148. The trial by jury may be waived by the parties in actions arising on contract, and, with the assent of the court, in other actions in the following manner:

First. By failing to appear at the trial.

Second. By written consent in person, or by attorney, filed with the clerk.

Third. By oral consent in open court, entered on the record.

SEC. 5149. Upon trials of questions of fact by the court, it shall state in writing the conclusions of fact found separately from the conclusions of law (fff).

SEC. 5150. The requirements respecting trials by jury apply, so far as they are in their nature applicable, to trials by the court. *Civil Code*, secs. 363, 364 and 377.

(ccc) This is discretionary with the court. *Little Rock Railroad Co. v. Pankhurst*, 36—377.

(†) See *L. R. & Ft. S. Ry. v. Miles*, 40—298.

(ddd) For manner of rendering judgment in action of replevin, see SEC. 5181.

(eee) See sixth subdivision of SEC. 3909 and SEC. 5255.

Where a cause has been submitted in the supreme court, if either party die before final judgment, the judgment may be rendered in the names of the original parties, as of a day previous to such death; or, if the death of either party be suggested and proven, a *nunc pro tunc* order may be made to extend back to a day between the submission and death. *Pool v. Loomis*, 5—110.

(fff) These findings may be reduced to writing after judgment. *Nathan v. Sloan*, 34—524. If they are not special, a party may move to have them made so. *Ib.* They are conclusive as to the facts, unless the evidence is set out. *Woodruff v. McDonald*, 33—97. This section has no application where judgment is rendered on demurrer. *Chrisman v. Rogers*, 30—352. Declarations of law need not precede the finding of facts. *Alexander v. State*, *use*, etc., 42—41.

NEW TRIALS.

SEC. 5151. A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury or a decision by the court. The former verdict or decision may be vacated and a new trial granted (ggg), on the application of the party aggrieved, for any of the following causes, affecting materially the substantial rights of such party :

First. Irregularity in the proceedings of the court, jury or prevailing party, or any order of court or abuse of discretion, by which the party was prevented from having a fair trial.

Second. Misconduct of the jury or prevailing party.

Third. Accident or surprise which ordinary prudence could not have guarded against.

Fourth. Excessive damages appearing to have been given under the influence of passion or prejudice (†).

Fifth. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property.

Sixth. The verdict or decision is not sustained by sufficient evidence, or is contrary to law.

Seventh. Newly-discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.

Eighth. Error of law occurring at the trial, and excepted to by the party making the application.

SEC. 5152. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.

SEC. 5153. The application for a new trial must be made at the term the verdict or decision is rendered, and, except for the cause mentioned in subdivision seven of section 5151, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

SEC. 5154. The application must be made by motion, upon written grounds, filed at the time of making the motion. The grounds mentioned in the second, third and seventh subdivisions of section 5151 must be sustained by affidavits showing their truth, and may be controverted by affidavits.

SEC. 5155. Where grounds for new trial are discovered after the term at which the verdict or decision was rendered, the application may be made by petition filed with the clerk not later than the second term after the discovery, on which a summons shall issue, as on other complaints, requiring the adverse party to appear and answer it on or before the first day of the next term. The application shall stand for hearing at the term to which the summons is returned executed, and shall be summarily decided by the court. The evidence may either be by depositions or by witnesses examined in court. But no such

(ggg) For causes for which a court may grant a new trial, vacate or modify its own judgment after the expiration of the term, see SECS. 3909-3915.

(†) See *Texas & St. Louis Railway Co. v. Eddy*, 42-527; *Kelly v. McDonald*, 39-387; *Ayliff v. Hardy*, 25-49.

application shall be made more than three years after the final judgment was rendered (†). *Ib.*, secs. 371-375.

EXCEPTIONS (hhh).

SEC. 5156. An exception is an objection taken to a decision of the court upon a matter of law.

SEC. 5157. The party objecting to the decision must except at the time the decision is made, and time may be given to reduce the exception to writing, but not beyond the succeeding term; but the parties may agree that exceptions to all decisions made during the trial are saved without being especially mentioned at the time the decision is made.

SEC. 5158. No particular form of exception is required. The objection must be stated, with so much of the evidence as is necessary to explain it and no more, and the whole as briefly as possible.

SEC. 5159. Where the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

SEC. 5160. Where the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exception to writing, and present it to the judge for his allowance and signature. If true, it shall be the duty of the judge to allow and sign it; whereupon it shall be filed with the pleadings as part of the record, but not spread at large on the order-book. If the writing is not true, the judge shall correct it, or suggest the correction to be made, and, when corrected, sign it.

SEC. 5161. If the party excepting is not satisfied with the correction, upon his procuring the signatures of two bystanders attesting the truth of his exception as by him prepared, the same shall be filed as part of the record; but the

(†) The three years begin to run from the date of judgment, though an appeal has been taken. *Jacks v. Adair*, 33—161. Bills of review are not abolished. *Ib.*; *Turner v. Vaughan*, *Ib.*, 454.

(hhh) There should be included in bill of exceptions an answer tendered, but not filed. *Hurlburt v. Manufacturing Co.*, 38—594, and the following: Motion for new trial. *Gaines v. Summers*, 39—482; *Farguharson v. Johnson*, 35—536. Excluded evidence. *Pounders v. State*, 37—399. Instructions. *Johnson v. Terry*, 35—220; *Carroll v. Bowler*, 40—168. Declarations of law. *Hall v. Bonville*, 36—491. A paper stricken from the files. *Harrell v. Tenant*, 30—684. Documentary evidence. *Woolfolk v. Wright*, 28—1. And an agreed statement of facts. *Ashley v. Stoddard*, 26—653. The bill must be signed by the judge trying the cause. *Watkins v. State*, 37—370. *Turner v. Collier*, *Ib.*, 528. Who may be compelled to sign it by mandamus. *Garibaldi v. Carroll*, 33—568. It must be filed. *Walker v. State*, 35—386; *Toliver v. State*, *Ib.*, 395. And it must show that it contains all the evidence. *Hibbard v. Kirby*, 38—102; *Potter v. State*, 42—30. Though that fact may be inferred from other statements in it. *Leggett v. Grimmett*, 36—496; *Thomas v. Hinkle*, 35—450. Time can not be extended beyond the next term. *Carroll v. Sanders*, 38—216. And if filed too late it is a nullity. *Ib.*; *Kearney v. Moose*, 37—37. Bill of exceptions may be filed in a chancery cause. *Casteel v. Casteel*, 38—477; *Lenay v. Johnson*, 35—225. But in chancery, papers on file are parts of the record. *Floyd v. McDaniel*, 36—484. Evidence and declarations of law are not made part of the record by being copied on the record of the court. *Hall v. Bonville*, 36—491; *Ward v. Worthington*, 33—830. Papers inserted in a motion for a new trial are no part of the record. *Winkler v. State*, 32—539. A statement in the bill of exceptions that an appeal was granted is no evidence of that fact. *Anthony v. Brooks*, 31—725. A reference in it to evidence not copied in it may be sufficient. *Jacks v. Dyer*, 31—334. And so of instructions, if they are so referred to as that they may be identified. *Stirman v. Cravens*, 29—548. Exceptions are not necessary where error appears on the face of the judgment. *Union County v. Smith*, 34—684. An answer copied on a bill of exceptions will not be noticed on appeal. *Randolph v. McCain*, 34—696.

When different judges preside during the progress of a trial, each should sign a bill of exceptions as to the proceedings before him. *Bullock v. Neal*, 42—278; *Cowall v. Alchul*, 40—172. When time is given to reduce exceptions to writing, the bill of exceptions must be filed within the time allowed. *Adler v. Conway County*, 42—488. When properly signed and filed, it becomes a record without any order of court making it so. *Bullock v. Neal*, *Ib.*, 278.

truth, of the exceptions may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the clerk within ten days after the filing of the exception, which affidavits shall be a part of the record.

SEC. 5162. No exception shall be regarded, unless it is material and prejudicial to the substantial rights of the party excepting. *Ib.*, secs. 365-370.

JUDGMENT.

SEC. 5163. A judgment is the final determination of the rights of the parties in an action.

May be Given For or Against One or More of the Plaintiffs or Defendants.

SEC. 5164. Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants.

SEC. 5165. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper. *Ib.*, secs. 399-401.

SEC. 5166. In any case where a set-off or counter-claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed his action or failed to appear.

SEC. 5167. Though all the defendants have been summoned, judgment may be rendered against any of them severally, where the plaintiff would be entitled to judgments against such defendants if the action had been against them alone (iii).

Upon Foreclosure of Mortgage or Lien.

SEC. 5168. It shall not be necessary, in any action upon a mortgage or lien, to enter an interlocutory judgment or give time for the payment of money, or for doing any other act; but final judgment may in such cases be given in the first instance.

SEC. 5169. In the foreclosure of a mortgage, a sale of the mortgaged property shall in all cases be ordered (jjj). *Ib.*, secs. 403-406.

SEC. 5170. In an action on a mortgage or lien, the judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally (*). *Ib.*, sec. 408.

SEC. 5171. Sales of personal property made by order of court shall be on a credit of three months; sales of real property on a credit of not less than three nor more than six months, or on installments equivalent to not more than four

(iii) Joint obligations "have the same effect as joint and several obligations." SEC. 3900. Where two or more persons are jointly bound by contract, action may be brought against all or any of them. SEC. 4944. Persons severally liable upon the same contract, including parties to bills of exchange, promissory notes, etc., may all or any of them, or the heirs or personal representatives of such as may have died, be included in the same action. SEC. 4943, and see SEC. 482, as to parties to actions on notes, etc.

(jjj) See *Mortgages*.

(*) In foreclosing a mortgage against the heir of the mortgagor, it is error to render a personal decree against him for the debt. *Harbison v. Vaughan*, 42-539.

months' credit on the whole, to be determined by the court (kkk). In all sales on credit, the purchaser shall execute bond, with good surety, to be approved by the person making the sale, which bond shall have the force of a judgment, and, in sales of real property, a lien shall be retained on the property for its price. *Ib.*, sec. 407.

SEC. 5172. If the whole of the mortgaged property does not sell for a sum sufficient to satisfy the amount due, an execution may be issued against the defendant, as on ordinary judgments. *Rev. Stat.*, chap. 101, sec. 17.

How Set Off.

SEC. 5173. Judgments for the recovery of money may be set off against each other, having due regard to the legal and equitable rights of all persons interested in both judgments. The set-off may be ordered, upon motion, after reasonable notice to the adverse party, where both judgments are in the same court, or in an action by equitable proceedings in the court in which the judgment sought to be annulled by the set-off was rendered.

SEC. 5174. During the pendency of an action the judgment in which, when recovered, could be used as a set-off against a judgment in favor of the defendants, or either of them, the court, to prevent loss by insolvency, non-residence or otherwise, may enjoin the collection of the judgment in favor of such defendants, according to the provisions of Chapter LXXXI, entitled "Injunction." *Civil Code*, secs. 409, 410.

Upon Failure to Answer.

SEC. 5175. If the taking of an account, or the proof of a fact, or the assessment of damages, is necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may take the account, hear the proof, and, in actions founded on contract, assess the damages, or may refer the same to a commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury is ordered, it shall be on or after the day on which the action is set for trial.

SEC. 5176. If only a part of the plaintiff's claim is controverted by the defendant's answer, judgment may at any time be rendered for the part not controverted. *Ib.*, secs. 411, 412.

Upon the Verdict of a Jury.

SEC. 5177. When a trial by a jury has been had, judgment must be entered by the clerk in conformity with the verdict, unless it is special, or the court orders the case to be reserved for future argument or consideration.

SEC. 5178. Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

SEC. 5179. Where, upon the statements in the pleadings, one party is enti-

(kkk) All sales made by order of the court must be on credit. *Welch v. Hicks*, 27—292. And see note (l) to SEC. 3048.

As to sales of property in proceedings by attachment, see SECS. 333, 348, 350.

tled by law to judgment in his favor, judgment shall be so entered by the court, though a verdict has been found against such party..

SEC. 5180. If a set-off established at the trial exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appears that the defendant is entitled to any other affirmative relief, judgment shall be given therefor.

SEC. 5181. In an action to recover the possession of personal property, judgment for the plaintiff may be for the delivery of the property, or for the value thereof, in case a delivery can not be had, and damages for the detention (III). Where the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for the return of the property, or its value, in case a return can not be had, and damages for the taking and withholding of the property.

SEC. 5182. Where special damages are given by statute, and it appears by the verdict of the jury, or other decision of the action, that such special damages are due and recoverable by one of the parties against the other, the court shall render judgment for them; and if, in ascertaining the amount thereof, it is necessary to assess the value of any property, or amount of any debt or claim, the court may hear the proof and assess such value or amount, or have the same made by a jury.

SEC. 5183. The judgment must be entered on the order-book, and specify clearly the relief granted, or other determination of the action.

SEC. 5184. It shall not be necessary to reserve, in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such a reservation would have been proper, the infant, within twelve months after arriving at the age of twenty-one years, may show cause against such order or judgment (mmm). *Ib.*, secs. 416-423.

By Confession.

SEC. 5185. Any person indebted, or against whom a cause of action exists, may personally appear in a court of competent jurisdiction, and, with the assent of the creditor or person having such cause of action, confess judgment therefor, whereupon judgment shall be entered accordingly.

SEC. 5186. The debt or cause of action shall be briefly stated in the judgment, or in a writing, to be filed as pleadings in other actions.

SEC. 5187. Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted, and the confession shall operate as a release of errors. *Ib.*, secs. 413-415.

In Cases of Constructive Service.

SEC. 5188. A defendant constructively summoned shall be allowed, at any time before judgment, to appear and defend the action; and, upon a substantial defense being disclosed, time may be given on reasonable terms to prepare for trial.

(III) For verdict in such case, see SEC. 5145. Judgment must be in the alternative. *Hanf v. Ford*, 37-550.
(mmm) As to procedure by infant in such cases, see SEC. 3911.

SEC. 5189. The statements of the complaint, as against a defendant constructively summoned, and who has not appeared, except such as are for his benefit, shall not be taken as true, but are to be established by proof. But where the plaintiff files with the complaint his own affidavit, stating that any of the allegations thereof recited in the affidavit are true, and known to be so by the defendant, and that they can not be proved or shown otherwise than by his answer, so far as affiant knows or believes such allegations, unless denied by the answer, shall be taken as true.

SEC. 5190. Before judgment is rendered against a defendant constructively summoned, and who has not appeared, it shall be necessary:

First. That an attorney be appointed, at least sixty days before the judgment is rendered, to defend for the defendant and inform him of the action and of such other matters as may be useful to him in preparing for his defense. He may take any step in the progress of the action, except filing an answer, without it having the effect of entering the appearance of such defendant. The attorney may be appointed by the clerk when the warning order is made, or by the court, and shall receive a reasonable compensation for his services, to be paid by the plaintiff and taxed in the costs (nnn).

Second. That a bond be executed to such defendant by one or more sufficient sureties of the plaintiff, to the effect that if the defendant, within the period prescribed by law, shall appear, make defense and set aside the judgment, the plaintiff shall restore to him the property taken under any attachment in the action, or under the judgment therein, the restoration of which may be adjudged, and pay to the defendant such sums of money as the court may award to him.

Third. That in suits brought by the personal representative or creditor of a deceased person to have a settlement of his estate and a sale of his real estate for the payment of his debts, and the heirs or devisees are non-residents, it shall not be required of the personal representative, or any creditor, to execute the bond required by this section.

SEC. 5191. The attorney appointed pursuant to the last section shall be a regular practicing attorney of the court; and, before an order for his compensation is made, he must make a written statement of all that he has done in the case, which shall be signed by him and filed with the papers of the action.

SEC. 5192. If the bond mentioned in section 5190 is not given, the court may enter a judgment ascertaining the rights of the parties, but shall retain control over and preserve any property, or the proceeds thereof, which may have been attached in the action, until the expiration of the period allowed to the defendant to appear and make defense; when, if no defense is made, such money or property, or its proceeds, shall be delivered according to the judgment.

SEC. 5193. Before rendering judgment against a defendant constructively summoned, and who has not appeared, the court may cause the plaintiff to appear personally in court, or before a commissioner, and answer, under oath, interrogatories concerning the matters in the complaint, or any matters of defense thereto, including matters of set-off or counter-claim, and may order

(nnn) Attorney *ad litem* may demur without entering defendant's appearance. *Henry v. Blackburn* 32—445.

the examination to be reduced to writing and filed with the papers of the action.

SEC. 5194. If, upon the examination provided in the last section, any matters of set-off or counter-claim are disclosed, the same may be adjusted and allowed in the judgment.

SEC. 5195. Where a judgment has been rendered against a defendant or defendants constructively summoned, and who did not appear, such defendants, or any one or more of them, may, at any time within five years after the rendition of the judgment, appear in court and move to have the action re-tried; and, security for the costs being given, they shall be admitted to make defense; and thereupon the action shall be re-tried as to such defendants, as if there had been no judgment; and, upon the new trial, the court may confirm the former judgment, or may modify or set it aside, and may order the plaintiff to restore any money of such defendant paid to him under it or any property of the defendant obtained by the plaintiff under it and yet remaining in his possession, and pay to the defendant the value of any property which may have been taken under an attachment in the action, or under the judgment, and not restored. But the provisions of this section shall not apply to judgments granting a divorce except so far as relates to alimony.

SEC. 5196. The plaintiff may at any time after judgment cause a certified copy thereof to be served on a defendant constructively summoned; whereupon the period in which such defendant is allowed to appear and have a new trial shall be reduced to one year after such service.

SEC. 5197. The service of the copy of the judgment, if in this state, shall be made and proved in the same manner as the service of a summons; and, if out of this state, in the manner prescribed in section 4987 as to the service of a copy of the complaint and summons and proof thereof.

SEC. 5198. The title of purchasers in good faith to any property sold under an attachment or judgment shall not be affected by the new trial permitted by section 5195, except the title of property obtained by the plaintiff and not bought of him in good faith by others.

SEC. 5199. No lien on the property of a defendant constructively summoned shall be created otherwise than by an attachment, as provided in chapter IX, "Attachments," or by judgment. Nor shall any other defendant be restrained from paying or delivering any money or property in his hands belonging or due to such defendant, by notice indorsed on the summons, or otherwise than by attachment or judgment.

SEC. 5200. No personal judgment shall be rendered against a defendant constructively summoned, or summoned out of this state, as provided in section 4987, and who has not appeared in the action (§). *Ib.*, secs. 443-455.

SEC. 5201. All judgments, orders, sentences and decrees made, rendered or pronounced by any of the courts of this state against any one without notice, actual or constructive, and all proceedings had under such judgments, orders, sentences or decrees, shall be absolutely null and void.

SEC. 5202. In all cases where it appears, from a recital in the records of any such court, that such notice has been given, it shall be evidence of such fact (ooo). *Act Feb. 17, 1859.*

(§) See *Silver v. Luck*, 42-268.

(ooo) See *Coone v. Throckmorton*, 26-60.

ORDER AND MOTION, DEFINITION OF.

SEC. 5203. Every direction of a court or judge entered upon the order-book, or made in writing, in a civil action, and not included in the judgment, is denominated an order.

SEC. 5204. An application for an order is a motion.

NOTICES.

SEC. 5205. The notices mentioned in the code shall be in writing, and may be served by a sheriff, constable, coroner or marshal of a town or city, whose return thereon shall be proof of the service. Notices may also be served by any person not a party or interested in the action or proceeding, whose affidavit shall be proof of the service, or by acknowledgment thereon in writing by the party upon whom served.

SEC. 5206. The service of a notice shall be by giving a copy thereof to the person to whom it is directed, or, if he can not be found at his usual place of abode, by leaving a copy there with a person over the age of sixteen years residing in the same family with him, or, if no such person is there, then by affixing a copy to the front door of such place of abode. If the person to whom the notice is directed can not be found, and has no known place of abode in this state, the notice may be served by delivering a copy to his attorney. The return of the officer, or the affidavit of the person who served the notice, shall state the time and manner of the service; and where a copy of the notice is not given to the person to whom it is directed, the return or affidavit shall state the facts authorizing the manner of service pursued.

SEC. 5207. Where the party has no known place of abode in this state, and no attorney in the county where the action is pending, or where the parties, plaintiffs or defendants, are numerous, the court may direct the mode of serving notices, and to what persons they shall be given.

SEC. 5208. A notice to an infant or person of unsound mind shall be served on the guardian or next friend bringing or defending the action for him.

SEC. 5209. A notice to a corporation may be served in the same manner as a summons in an action against it.

SEC. 5210. Where husband and wife unite in bringing or defending an action, the service of a notice on the husband shall be deemed a service on the wife.

SEC. 5211. A notice to a person constructively summoned, and not appearing, shall be served on the attorney appointed to defend for him.

SEC. 5212. Where it is not otherwise specially provided, a notice to a party in an action of any motion or proceeding to be made or taken therein in court, or before a judge, may be served upon such party or his attorney; but the service upon the attorney in any such case must be by delivering to him a copy of the notice.

SEC. 5213. Where a party to an action does not reside in the county in which it is pending, a notice to him to take depositions may be served by delivering a copy thereof to his attorney (ppp).

SEC. 5214. It shall be the duty of the sheriff, and of every constable, to whom any notice in an action may be delivered for service within his county, to serve and return such notice to the party who delivered it to him. A failure to perform this duty may be punished as a disobedience of the process of the court. *Civil Code, secs. 704-715.*

OFFER TO COMPROMISE.

SEC. 5215. The defendant in an action for the recovery of money only may, at any time before the trial, serve upon the plaintiff or his attorney an offer in writing to allow judgment to be taken against him for the sum specified therein. If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; and in either case the offer and acceptance shall be noted upon the record, and judgment shall be rendered accordingly. If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

SEC. 5216. In an action for the recovery of money only, the defendant, having answered, may serve upon the plaintiff or his attorney an offer in writing that, if he fails in his defense, the amount of the recovery shall be assessed at a specified sum. If the plaintiff accepts the offer and gives notice thereof to the defendant or his attorney within five days after it was served, and the defendant fails in his defense, the judgment shall be for the amount so agreed upon. If the plaintiff does not accept the offer, he shall prove the amount to be recovered, as if the offer had not been made. The offer shall not be given in evidence or mentioned on the trial. And if the amount recovered by the plaintiff does not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in the defense in respect to the question of amount, to be taxed under the direction of the court.

SEC. 5217. The making of any such offer shall not be a cause for a continuance of an action or a postponement of a trial.

SUBMITTING A CONTROVERSY WITHOUT SUIT.

SEC. 5218. Parties to a question which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment as if an action were pending.

SEC. 5219. The case, the submission and the judgment shall constitute the record.

SEC. 5220. The judgment shall be with costs, may be enforced, and shall

be subject to reversal in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

OFFER TO CONFESS JUDGMENT.

SEC. 5221. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and the time of making it, as the court shall deem reasonable, fails to attend, and on the trial does not recover more than was so offered to be confessed, such plaintiff shall pay all of the costs of the defendant incurred after the offer.

SEC. 5222. The offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence upon the trial. *Ib.*, *secs.* 716-722.

WHAT CAUSES OF ACTION SURVIVE.

SEC. 5223. For wrongs done to the person or property of another, an action may be maintained against the wrong-doers, and such action may be brought by the person injured, or, after his death, by his executor or administrator, against such wrong-doer, or, after his death, against his executor or administrator, in the same manner and with like effect in all respects as actions founded on contracts (†).

SEC. 5224. Nothing in the preceding section shall be so construed as to extend its provisions to actions of slander or libel. *Rev. Stat.*, chap. 4, *secs.* 59-60.

SEC. 5225. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount, in law, to a felony.

SEC. 5226. Every such action shall be brought by, and in the name of, the personal representatives of such deceased person, and if there be no personal representatives, then the same may be brought by the heirs at law of such deceased person; and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin, in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and, in every such action, the jury may give such damages as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from such death, to the wife and next of kin of such deceased

(†) See *Ward v. Blackwood*, 41—235.

person. *Provided*, that every such action shall be commenced within two years after the death of such person. *Act March 6, 1883.*

SUCCESSIVE ACTIONS ON SAME CONTRACT, ETC.

SEC. 5227. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action has arisen therefrom. *Civil Code, sec. 789.*

ACTIONS FOR THE RECOVERY OF STOLEN PROPERTY.

SEC. 5228. All property obtained by larceny, robbery or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property.

SEC. 5229. Any person losing property or any valuable thing by larceny, robbery or burglary may maintain his action, not only against such felon, but against any person whatsoever in whose hands or possession the same may be found. *Rev. Stat., chap. 44, art. 6, div. 4, secs. 3, 4.*

SEC. 5230. In no case shall the right of action of any party injured by the commission of a felony be deemed or adjudged to be merged in such felony, but damages sustained thereby may be recovered in an action brought for that purpose (qqq). *Rev. Stat., chap. 45, sec. 264.*

REVIVOR OF ACTIONS.

SEC. 5231. In all cases where suits may be instituted, and either plaintiff or defendant may die pending the same, it shall be lawful for the court before which such suit or suits may be pending, on the motion of any party interested, to appoint a special administrator, in whose name the cause shall be revived, and said suit or suits shall progress, in all respects, in his name with like effect as if the plaintiff or defendant (as the case may be) had remained in full life.

SEC. 5232. The powers of such special administrator shall extend and be confined alone to the mere prosecution or defense of the particular suit or suits he may be appointed by the court to prosecute or defend.

SEC. 5233. No special administrator shall be appointed, as in this act prescribed, where there is a general administrator (*). No such special administrator or executor shall be liable for costs of the suit, for the management whereof he may be appointed. *Act Jan. 10, 1851.*

SEC. 5234. Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survives to or against the remaining parties, the action may proceed, the death of the party or the cessation of his powers being stated on the record.

SEC. 5235. Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action does not admit of sur-

(qqq) See *Brunson v. Martin*, 17—270.

(*) See *Grace v. Noel*, 41—165.

vivorship, and the court is of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the cause as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

SEC. 5236. Where one of the parties to an action dies, or his powers as a personal representative cease, before the judgment, if the right of action survives in favor of or against his representatives or successor, the action may be revived and proceed in their names.

SEC. 5237. The revivor shall be by an order of the court, that the action be revived in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them (rrr).

SEC. 5238. The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

SEC. 5239. If the order is made by the consent of the parties, the action shall forthwith stand revived; and, if not made by consent, the order shall be served in the same manner as a summons upon the party adverse to the one making the motion. And at the first term, commencing not less than ten days after such service, the party on whom it is made may show cause against the revivor; and, if sufficient cause is not then shown, the cause shall stand revived.

SEC. 5240. If ten days' notice has been given to the representatives or successor of the party who died, or whose powers ceased, of the motion by the adverse party for an order to revive the action in their names, or to the adverse party, where the motion is by such representatives or successor, and due return is made of the service of the notice, the court may, if sufficient cause is not shown to the contrary, make an order reviving the action in the names of such parties, whereupon the action shall stand revived.

SEC. 5241. Where it appears to the court, by the affidavit of the plaintiff, that the representatives of the defendant, or any of them, in whose name the action is ordered to be revived, are non-residents of this state, or have left the same to avoid the service of the order, or have been absent therefrom four months, or so conceal themselves that the order can not be served upon them, or that the names of the heirs of the defendant against whom the action is ordered to be revived, or of some of them, are unknown to the affiant, an order may be made by the court warning such representatives or unknown heirs to appear on the first day of its next term and show cause why the action should not be revived against them. The parties so warned shall be deemed constructively served with a copy of the order of revivor ten days before the term at which they are warned to appear; and, if sufficient cause is not shown to the contrary, the action shall, at that term, stand revived.

SEC. 5242. Upon the death of a plaintiff in an action, it may be revived in the name of his representatives, to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his

(rrr) An order of revivor must be served on a minor in the same way that a summons must be served. *Haley v. Taylor*, 39—106.

name (*); where it has passed to his heirs, or to his devisees, who could support the action if brought anew, the revivor may be in their names.

SEC. 5243. Upon the death of a defendant in an action wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both; and where one year has elapsed after the death of the defendant, and no person has qualified as his personal representative, the action may be revived, and proceed against his heirs or devisees, or both.

SEC. 5244. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made in the manner directed in the preceding sections.

SEC. 5245. An order to revive an action against the personal representatives of a defendant, or against him and the heirs or devisees of the defendant, can not be made, unless by consent, until after six months from the qualification of the personal representative.

SEC. 5246. An order to revive an action against the representatives or successor of a defendant shall not be made without the consent of such representatives or successor, unless in one year from the time it could have been first made.

SEC. 5247. An order to revive an action in the names of the representatives or successor of a plaintiff may be made forthwith, but shall not be made without the consent of the defendant after the expiration of one year from the time the order might have been first made, except that, where the defendant shall also have died or his powers have ceased in the meantime, the order of revivor on both sides may be made in the period limited in the last section.

SEC. 5248. When it appears to the court by affidavit that either party to an action has been dead, or, where he sues or is sued as a personal representative, that his powers have ceased for a period so long that the action can not be revived in the names of his representatives or successor without the consent of both parties, it shall order the action to be stricken from the docket.

SEC. 5249. At any term of the court succeeding the death of the plaintiff, whilst the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days' notice of the application therefor, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action is forthwith revived.

SEC. 5250. When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place. *Civil Code, secs. 549-565.*

CONVEYANCE BY COMMISSIONERS.

SEC. 5251. Real property may be conveyed by a commissioner appointed by the court:

(*) See *Martin v. Tyree*, 41—314.

First. Where, by the judgment in an action, a party is ordered to convey such property to another.

Second. Where such property has been sold under a judgment or order of the court, and the purchase money paid.

SEC. 5252. The deed of the commissioner shall so refer to the judgment, orders and proceedings authorizing the conveyance as that the same may be readily found.

SEC. 5253. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

SEC. 5254. A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.

SEC. 5255. After a conveyance is ordered or adjudged, if any of the parties shall die, it shall not be necessary to revive the action, but the conveyance, in pursuance of the judgment or order, shall be effectual to pass the title, notwithstanding the death of any of the parties.

SEC. 5256. A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be indorsed on the conveyance and recorded with it (sss).

SEC. 5257. It shall be necessary for the conveyance to be signed by the commissioner only, without affixing the names of the parties whose title is conveyed; but the names of such parties shall be recited in the body of the conveyance.

SEC. 5258. The conveyance shall be recorded in the office in which, by law, it should have been recorded had it been made by the parties whose title is conveyed by it. *Civil Code, secs. 428-435.*

MASTERS IN CHANCERY.

SEC. 5259. The several circuit courts of this state shall have power to appoint in each county a master in chancery, who shall hold his office during the pleasure of the court (ttt).

SEC. 5260. Each master in chancery shall have power to take testimony and to administer oaths and to compel the attendance of witnesses in all matters referred to him, and to do and perform all such other ministerial acts as are commonly performed by a master in chancery.

SEC. 5261. There shall be but one master at a time in any one county, unless the master be of kin to either of the parties, or is interested in any cause, or is absent from the county. In such cases a special master may be appointed.

SEC. 5262. Every master, before entering on the duties of his appointment, shall be sworn, in open court, faithfully and impartially to perform the duties of his appointment, which shall be entered on the minutes.

SEC. 5263. All matters of account pending in chancery may be referred by the court to the master, and he shall audit and adjust the same, and make report thereof to the court.

SEC. 5264. When any matter shall be referred to the master, or he is required to take testimony in a cause, he shall appoint the time and place for

(sss) Until confirmed, the sale is not completed. *Wells v. Ritor*, 34—346.

(ttt) The county clerk is *ex officio* master. SEC. 538.

proceeding therein, and give notice thereof, in writing, to the parties or their solicitors, and if either party, being notified, shall fail to appear, he may proceed *ex parte* (uuu).

SEC. 5265. The master may adjourn his sittings from time to time, and issue attachments to compel the attendance of witnesses who, being summoned, failed to attend.

SEC. 5266. He shall reduce to writing the testimony of all witnesses examined by him, and shall have power to commit such witnesses as may refuse to testify.

SEC. 5267. Depositions, regularly taken in a cause, may be read in evidence before the master, where the cause has been referred to him.

SEC. 5268. When accounts have been referred to the master, after having heard the testimony adduced by the parties, he shall state them truly, according to his opinion, and, if the parties require it, also according to the views of each of them.

SEC. 5269. If either party shall except to the competency of any witness, or to the admission or exclusion of any evidence, the master, if required, shall state the particulars of the exceptions in his report.

SEC. 5270. The master shall report on all cases referred to him as speedily as possible, reciting in his report the order of the court referring the cause to him, the notice to the parties, the time and place of stating the account or taking depositions, and all other proceedings had therein, and return the same, together with the testimony, to the court. The report shall be in sheets, neatly and securely stitched together.

SEC. 5271. All exceptions to the master's report shall be in writing, and shall be made within four days after the first day of the term of the court at which the report is made, if the term so long continue, and, if not, before the end of the term, and shall be disposed of without delay.

SEC. 5272. The report shall stand good, except such parts as are excepted to, unless it shall appear on the face of the report or from the evidence in the cause that it is erroneous.

SEC. 5273. Exceptions may be allowed to the master's report where he admitted incompetent testimony, or where he excluded competent testimony, or for any other cause which may be adjudged good by the court, or when it shall be apparent from the face of the report that injustice has been done.

SEC. 5274. When exceptions are allowed, the court may refer the report to the master again, with such instructions as may be necessary.

SEC. 5275. In all cases where no exceptions are filed to the master's report within the time prescribed in this act, or where the exceptions have been overruled, a decree shall be entered up accordingly.

SEC. 5276. Where exceptions have been allowed to the master's report, and the account shall have been restated by the court or master, a decree shall be entered accordingly. *Rev. Stat., chap. 23, secs. 71-89.*

RECEIVERS (vvv).

SEC. 5277. Whenever it shall not be forbidden by law, and shall be deemed fair and proper in any case in equity, the court, judge or chancellor shall ap-

(uuu) As to who may serve notice, see SEC. 5205.

(vvv) See note (www) post.

point some prudent and discreet person as receiver, who shall take an oath faithfully, impartially, diligently and truly to execute the trust reposed in him, and shall also give bond, with good and sufficient security, to be approved by the court or judge or chancellor, in such sum as may be deemed sufficient, to the State of Arkansas, for the benefit of all persons in interest, conditioned that he will faithfully discharge the duties incumbent on him, and faithfully account for and pay into court, at such times as the court or law may prescribe, or according to the order of the court, all moneys or assets which shall come to his hands as such receiver in the case, which shall be filed, and a certified copy thereof shall be received as evidence in all courts (†).

SEC. 5278. Additional bonds may be required and taken at any time when the same shall be necessary, and in such amounts as shall be sufficient to secure a faithful performance of the trust; and such receiver may be appointed either before or after answer or after a decree, and affidavits to obtain such appointment shall not be required when it appears by other means to the satisfaction of the court, judge or chancellor that such appointment should be made.

SEC. 5279. If it shall be necessary, more receivers than one may be appointed, who shall take an oath and give bond, and be subject to the duties, liabilities, responsibilities and restrictions specified in this act.

SEC. 5280. After the receiver shall take the oath and give bond as required by this act, he shall possess all the powers which a receiver in a court of chancery can have or possess, unless otherwise provided in this act.

SEC. 5281. In all cases where it shall be necessary or proper for a receiver to collect debts by suit, he may sue in his own name, but all moneys collected by him shall be accounted for and paid into court, or be subject to the order of the court, judge or chancellor; and said receiver shall have power to employ attorneys and make to them a reasonable allowance for services, and to be paid out of the funds collected by him.

SEC. 5282. No receiver shall be required to give security in any appeal or writ of error, or to obtain an injunction in any suit it may be his duty to prosecute or defend, but an appeal taken or writ of error sued out by him shall *ipso facto* operate as a supersedeas.

SEC. 5283. Whenever, in any case, a receiver shall be appointed for a corporation or the trustees thereof, or any co-partnership or joint stock company, and the order or decree of the court, judge or chancellor shall be that the lands, tenements, goods, chattels, funds, assets, moneys, credits, choses in action, rights and interests of every kind, name and nature, either in law or equity, or any part thereof, belonging to the same, shall be placed in the hands of such receiver, he shall from thenceforward, until the further order or decree of the court, judge or chancellor, have full possession, custody and control thereof, and shall be vested with the title, so far as it shall be necessary to collect debts, preserve the assets and property for the benefit of creditors and all persons interested, and may and shall bring and prosecute and defend all suits in his own name that may be necessary for that purpose.

SEC. 5284. In all suits that may be pending in any court, prosecuted by or brought against such corporation, or trustees, or co-partnership, or joint stock company, or in which either may be interested, such receiver may be substituted

(†) See SEC. 5291.

as a party, on his own application, without process or revivor, and prosecute or defend the same with like effect as the original parties might or could do, and suits may progress against him by substitution in the same manner.

SEC. 5285. The provisions of the three preceding sections shall apply to cases between individuals with like effect, as above declared.

SEC. 5286. Receivers may be removed at any time by the court, judge or chancellor, when it shall satisfactorily appear that they have failed to discharge any duty incumbent on them, or for other sufficient cause, and others appointed who shall be subject to the provisions of this act, and this may be done upon the motion of any person interested, either as party, creditor, or otherwise.

SEC. 5287. Receivers shall make report of their proceedings every six months, or oftener, if required by the court, judge or chancellor, and the performance of this duty may be enforced by attachment, sequestration, or other proper and effectual means, and they shall have credit for all taxes, expenses, attorney's fees and necessary disbursements, in the execution of their trusts, and such reasonable and proper compensation for their own services as the court, judge or chancellor may allow, to be paid out of the trust fund as part of the costs and expenses, and the court, judge or chancellor shall pass on their accounts, and a confirmation thereof shall be conclusive against all persons whatsoever, and not subject to be reinvestigated, except for actual fraud (www). *Act Jan. 15, 1857.*

SEC. 5288. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of plaintiff or of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured, the court may appoint a receiver to take charge thereof during the pendency of the action, and may order and coerce the delivery of it to him (xxx).

SEC. 5289. In an action by a mortgagee for the foreclosure of his mortgage and the sale of the mortgaged property, a receiver may in like manner be appointed where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

SEC. 5290. No party or attorney, or person interested in an action, shall be appointed receiver therein.

SEC. 5291. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and, with one or more sureties approved by the court, execute a bond to such person and in such sum as the court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein (*).

SEC. 5292. The receiver has, under the control of the court, power to bring and defend actions, to take and keep possession of the property, to receive rents,

(www) This act was not repealed by the code. *Franklin v. Meyer*, 36—96.

(xxx) A receiver may be appointed to take charge of choses in action or property attached or in the hands of garnishee. Secs. 335, 342.

(*) See SEC. 5277.

collect debts, and generally do such acts respecting the property as the court may authorize. *Civil Code, secs. 323-327.*

DEPOSIT IN COURT.

SEC. 5293. Where it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

SEC. 5294. Whenever, in the exercise of its authority, a court has ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with its directions.

SEC. 5295. The court may direct the sheriff to keep safely any property delivered pursuant to the foregoing provisions, and may allow him the necessary expenses attending the same, to be paid by such party as the court shall direct, and taxed in the costs of the action.

SEC. 5296. It may confide to the sheriff money deposited or paid into court, which shall be kept by him under the same requirements and responsibilities of himself and his sureties as are provided by law in respect to money deposited in lieu of bail.

SEC. 5297. A court sitting in a county in which, or in any county adjoining which, there is a bank, or a branch of a bank, created by the laws of this state or the United States, transacting regular banking business, may order money paid into court to be deposited in such bank or branch to the credit of the court, in the action or proceeding in which the money was paid. Money so deposited shall be paid only upon the check of the clerk of the court annexed to its certified order for the payment, and in favor of the person to whom the order directs the payment to be made.

SEC. 5298. Money deposited or paid into the court in any action shall not be loaned out by the court, unless with the consent of all the parties having an interest in or making claim to the same. *Ib., secs. 328-333.*

BONDS—SURETIES THERETO—ACTIONS THEREON.

SEC. 5299. When any bond provided for by law is adjudged to be defective, a new and sufficient one may be executed in such reasonable time as the court may fix, with the same effect as if originally executed.

SEC. 5300. The ministerial officer whose duty it is to take a surety in any bond provided for by law shall have the right to require the person offered as surety to make affidavit of his qualification, which affidavit may be made before such officer; but any person interested may contest the sufficiency of such surety upon the making of such affidavit. *Provided*, it is made to appear that such surety is not sufficient, and an officer who, in good faith, complies with this section shall be exempt from any liability to which he might otherwise be subject for taking insufficient surety.

SEC. 5301. The surety in every bond provided for by law must be a resident of this state, and worth double the sum to be secured beyond the amount of his debts, and have property liable to execution in this state equal to the sum to be secured. Where there are two or more sureties in the same bond they must, in the aggregate, have the qualifications prescribed in this section. *Ib.*, *secs.* 785-787.

SEC. 5302. No attorney, solicitor or counselor at law or in equity, clerk, sheriff or other person concerned in the execution of any process shall become bail in any civil or criminal case without leave of the court, which shall be entered of record. *Rev. Stat.*, *chap.* 116, *sec.* 23.

SEC. 5303. The bond of no executor, administrator or guardian, nor any prosecution, appeal, non-resident or attachment bond, nor any other statutory bond of any party, plaintiff or defendant in any court, nor any recognizance in any criminal cause, shall be declared null and void for the want of form. *Provided*, that the intent of the same can be plainly deducible from the body of such bond or recognizance. *Act Jan.* 15, 1857.

WRITS AND PROCESS (yyy).

SEC. 5304. All writs and other judicial process shall run in the name of the State of Arkansas, bear test and be signed by the clerks of the respective courts from which they issue. *Art. VII*, *sec.* 49, *Const.*

SEC. 5305. All such writs shall be sealed with the judicial seal of such court.

SEC. 5306. All writs and process issued by any judge or justice of the peace, or other officer authorized to issue the same, shall run in the name of the State of Arkansas, and be signed by the officer issuing the same.

SEC. 5307. When any writ or other process shall not be executed, the clerk, on the application of the party suing out the same, shall issue an *alias*, *pluries* or other proper process without an order of the court for that purpose. *Rev. Stat.*, *chap.* 159, *secs.* 2, 3, 8.

SEC. 5308. No summons or order for a provisional remedy shall be issued by the clerk in any action before the plaintiff's complaint or petition therein is filed in his office.

SEC. 5309. It shall be no objection to any process, writ, summons, affidavit or order for a provisional remedy that it was issued, made or is dated on a holiday; nor shall it be an objection to any bond given by or for any party to an action, or taken by an officer in the course of the same, that it was made or is dated on any such day.

SEC. 5310. A summons or order for a provisional remedy may be issued on any holiday, except Sunday, and on Sunday where an affidavit of the plaintiff or some other person is made to the effect that, unless it is issued on that day, there is reasonable cause to believe that it can not be executed.

SEC. 5311. An order of attachment, or for the delivery of property, may be executed on any holiday except Sunday, and on Sunday when the officer having the process believes, or an affidavit of the plaintiff or some other person is made to the effect that the affiant believes, that the property is about to be concealed or removed, or that the process can not be executed after such holiday.

(yyy) Courts always have control over their own process. *Hinkle v. Ball*, 34-177; *King v. Clay*, *Id.*, 291.

SEC. 5312. A summons, subpoena, notice, order of arrest or of injunction may be issued on any holiday, except Sunday, and on Sunday where the officer having the process believes, or an affidavit of the plaintiff or some other person is made to the effect that affiant believes, that the process can not be executed after such holiday.

SEC. 5313. The defendant shall have no privilege of exemption from the service of the process mentioned in the last section, except from an arrest by reason of his attendance at any muster, election or order of survey, or as a witness at any court or other place.

SEC. 5314. An order for a provisional remedy or any other process, in an action wherein the sheriff is a party or is interested, shall be directed to the coroner, or, if he is interested, to some constable.

SEC. 5315. The court, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which a sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by his affidavit. He shall be entitled to the fees allowed to the sheriff for similar services. *Civil Code, secs. 762-769.*

SEC. 5316. Every officer to whom any writ shall be delivered to be executed shall indorse thereon the time when such writ came to his hands, and shall make return thereof in writing, and shall sign his name to such return, and set out how and in what manner he executed the same. *Rev. Stat., chap. 116, sec. 20.*

SEC. 5317. The act known as the "Code of Practice in Civil Cases," approved July 22, 1868, as amended by this act, shall constitute and regulate all civil practice and proceedings in all the courts of this state, and all other acts prescribing or regulating the practice in civil actions in the courts of this state are hereby repealed. *Civil Code, sec. 890, as amended by act March 27, 1871.*

CHAPTER CXX.

POISONS—SALE OF.

SECTION

5318. Unlawful to sell poisons without label.

5319. Record of sales of poisons required to be kept.

5320. Declares certain articles to be poisons.

SECTION

5321. Act does not apply to prescriptions.

5322. Penalty for violation of act.

SECTION 5318. It shall be unlawful for any person to sell, either at wholesale or retail, any of the drugs usually denominated poisons without distinctly labeling the bottle, box or packages with the name of the article and the word "poison," together with the name and place of business of the seller.

SEC. 5319. It shall be the duty of every person selling a poison at retail, before delivering the same, to make, or cause to be made, an entry in a book kept for that purpose, stating the date of sale, name of poison, quantity, for what purpose, name, sex or color of the purchaser, or for whom purchased, resi-

dence of purchaser and by whom sold. Such book is to be preserved for at least five years after the date of the last entry therein, and to be always open to the inspection of the coroner and the officers of the different courts. *Act March 19, 1881, secs. 1, 2.*

SEC. 5320. The following named articles, and those hereafter declared to be poisons by law, shall be considered poisons within the meaning of this act, to wit: Arsenic and its compounds, strychnia and its salts, corrosive sublimate, hydrocyanic acid, oil of bitter almonds, croton oil, opium and its preparations, except paregoric, and those preparations containing two grains or less of opium to the ounce. *Ib., sec. 3, as amended by act March 26, 1883.*

SEC. 5321. Nothing herein contained shall apply to or in any manner interfere with the compounding and dispensing of medicines and poisons by a medical practitioner, or upon the prescriptions of one.

SEC. 5322. Any person who shall violate any of the provisions of this act shall, upon conviction thereof, be sentenced to pay a fine of not less than five nor more than one hundred dollars for each offense. *Ib., secs. 4, 5.*

CHAPTER CXXI.

PROSECUTING ATTORNEYS.

SECTION

5323. Term of office and qualifications.
5324, 5325, 5326. Duties of.
5327, 5328, 5329. Misdemeanor in office of; penalty;
fee for convicting.
5330. To cause witnesses to be subpoenaed before
grand jury, when.
5331. May cause such witnesses subpoenaed in va-
cation.

SECTION

5332. May file information before justices, etc.
5333. To report under oath receipt of all moneys
when and to whom.
5334. When guilty of negligence in office.
5335. When court to appoint prosecuting attorney
pro tem.
5336. Compensation of attorney *pro tem.*, how and by
whom paid.

SECTION 5323. The qualified electors of each circuit shall elect a prosecuting attorney, who shall hold his office for the term of two years; and he shall be a citizen of the United States, learned in the law, and a resident of the circuit for which he may be elected. *Art. VII, sec. 24, Const.*

SEC. 5324. Each prosecuting attorney shall commence and prosecute actions, both civil and criminal, in which the state or any county in his circuit may be concerned.

SEC. 5325. He shall defend all suits brought against the state, or any county in his circuit (a), prosecute all forfeited recognizances and actions for the recovery of debts, fines, forfeitures or penalties accruing to the state in any county in his circuit.

SEC. 5326. He shall, without fee or reward, give his opinion to any sheriff, constable, justice of the peace or county court, if required, on any question of

(a) It is his official duty to defend suits brought in the federal court against a county embraced in his circuit. *Graham v. Parham*, 32—676.

law in any criminal case or other matter in which the state or county is concerned, pending before such court or officer. *Rev. Stat., chap. 16, secs. 1-3.*

SEC. 5327. Prosecuting attorneys may be indicted for any misdemeanor in office or neglect of duty, and punished by fine, not less than fifty nor more than one thousand dollars. *Ib., sec. 8.*

SEC. 5328. When a bill of indictment has been found against any prosecuting attorney, for any offense whatever, it shall be the duty of the court in which such indictment may be found to appoint some person, being an attorney at law, to conduct the prosecution against such attorney, and, if such prosecuting attorney be convicted, the attorney conducting the prosecution shall be entitled to receive the sum of fifty dollars out of the salary of such prosecuting attorney. *Ib., sec. 9.*

SEC. 5329. The auditor, on receiving a certificate of the conviction of such prosecuting attorney, shall draw his warrant on the treasurer for such sum, if so much of said prosecuting attorney's salary be due. *Ib., sec. 10.*

SEC. 5330. It shall be the duty of each prosecuting attorney, whenever he shall have information of the commission of any offense against the criminal and penal laws of this state, or shall have reason to believe that any offense has been committed, to cause to be summoned all persons that he may think necessary to testify before the grand jury in relation to such offense. *Ib., sec. 11.*

SEC. 5331. The clerk of the circuit court of every county in this state shall, on the request of the prosecuting attorney of the district in which said county is situated, issue, in vacation of said court, subpoenas for witnesses to appear before the grand jury of such county, to be impaneled at the next term of said court, and shall deliver said subpoenas to the sheriff of the county, who shall serve them before the convening of said court; and any witness refusing to obey any subpoena so issued and served upon him shall be guilty of contempt of court.

SEC. 5332. The prosecuting attorney of every circuit in this state shall have authority, whenever he believes any person has committed a crime in any county in the circuit for which he is elected, to file, before any justice of the peace within the county in which he believes such crime has been committed, a written information, under oath, charging such person in due form of law with the commission of such crime, whereupon the justice shall issue his warrant for the arrest of the offender, and have him brought before him, to be dealt with according to law (*). *Act March 1, 1883.*

SEC. 5333. Each prosecuting attorney shall, on or before the first day of January in each year, file in the office of the auditor of state, and in the offices of the several county treasurers in his circuit, an account in writing, verified by the affidavit of such prosecuting attorney, of all the moneys received by him by virtue of his office, during the preceding year, for the use of the state, or any county, and, at the same time, shall pay over all such moneys to the state or county treasurer entitled to receive the same (b). *Rev. Stat., chap. 16, sec. 13.*

(*) See SEC. 1928.

(b) The "collectors, and they only," are authorized to collect fines, penalties and forfeitures. SEC. 5868. No attorney is authorized to receive moneys due the state. SECS. 5834, 5868, 6392.

The prosecuting attorneys are authorized to collect and receive the money on claims due the state for lands sold. SECS. 4332, 4354.

SEC. 5334. If any prosecuting attorney shall neglect to perform the duties required of him in the preceding section, he shall be deemed guilty of negligence in his office, and shall be proceeded against accordingly. *Ib.*, sec. 14.

SEC. 5335. If any prosecuting attorney shall neglect, or fail from sickness, or any other cause, to attend any of the courts of the circuit for which he was elected and prosecute as required by law, it shall be the duty of the court to appoint some proper person, being an attorney at law, to prosecute for the state during the term, who shall, on taking the oath of office, perform all the duties of the regular prosecuting attorney for the term.

SEC. 5336. The person so appointed shall be entitled to receive the same fees on convictions as the prosecuting attorney, and the sum of forty dollars for each term of the court, for prosecuting as aforesaid, to be paid by the treasurer of the state out of any money appropriated for that purpose, and it shall be the duty of the auditor, on receiving the certificate of the judge of the circuit court making the appointment of such prosecuting attorney *pro tem.*, to audit and allow the account, and draw his warrant on the treasurer for the payment thereof. *Provided*, that the amounts herein allowed for prosecuting attorneys *pro tem.* shall be deducted from the regular prosecuting attorney's salary whenever a failure occurs on his part not occasioned by sickness of himself or family (bb). *Act Nov. 10, 1875.*

(bb) See *White v. Berry*, 28—198.

CHAPTER CXXII.

PUBLIC RECORDS.

SECTION

OUTGOING OFFICER TO TURN OVER PUBLIC RECORDS
TO HIS SUCCESSOR—HOW DELIVERY COMPELLED.

5337. Outgoing officer to turn over public records to his successor.
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OUTGOING OFFICER TO TURN OVER PUBLIC RECORDS TO HIS SUCCESSOR—HOW
DELIVERY COMPELLED.

SECTION 5337. If any civil or military officer having any records, books or papers appertaining to any public office shall resign, or his office shall become vacant, he shall deliver to his successor all such records, books and papers.

SEC. 5338. When any such officer shall die, his executor or administrator shall deliver such records, books and papers to his successor.

SEC. 5339. If any such officer, or the executor or administrator of any such officer, shall fail to deliver such records, books and papers, he shall forfeit any sum not less than one hundred nor more than one thousand dollars, to be recovered by civil action, or by indictment, for the use of the county, and shall pay to the person injured by the detention of such records, books and papers all damages which he may have sustained in consequence of such detention.

SEC. 5340. If any person whose office has become vacant, or his executor or administrator, shall fail to deliver any record, book or paper to the person entitled to the same, any judge of the supreme or circuit court, upon the affidavit of any creditable person setting forth the facts, may issue a warrant directed to some sheriff or coroner, commanding him to seize all the books, records and papers appertaining to such office and deliver them to the proper officer, who shall be named in such warrant.

SEC. 5341. If any person shall hold over, or refuse to deliver such records, books or papers, he shall first have notice of the time and place of the application for such warrant, to show cause, if any he may have, why such warrant should not be issued.

SEC. 5342. The officer executing any such warrant may break open any doors or other places in which any records, books or papers named in such warrant may be, or in which he may suspect them to be, and may arrest any person who shall resist the execution of such warrant, and carry him before some judge or justice of the peace, to be dealt with for obstructing the execution of process.

SEC. 5343. Any officer to whom such warrant may be directed and delivered who shall fail to execute or return the same, or perform any duty required of him, shall forfeit to the use of the county any sum not less than one hundred nor more than five hundred dollars, to be recovered by indictment.

SEC. 5344. Any person aggrieved by such warrant may apply to any judge of the supreme or circuit court, who, upon the affidavit of the applicant that injustice has been done, or is about to be done, by such warrant, shall issue a citation to all persons interested, commanding them to appear before him, at a time and place named in the citation, which shall be served by the sheriff or coroner.

SEC. 5345. The judge issuing such citation shall have power to enforce obedience thereto by attachment, and shall proceed in a summary manner, and determine according to right and justice, and may issue his warrant for the restoration of any books, records or papers found to have been improperly seized.

SEC. 5346. If any private person shall have or obtain possession of any books, records or papers appertaining to any public officer, he shall deliver them to the officer entitled to the same, and if he fails so to do he shall be proceeded against in all respects as is provided in this act in cases of officers. *Rev. Stat., chap. 121.*

LOST, HOW RESTORED.

SEC. 5347. Whenever any of the public records, including all records, papers and proceedings of every description of record, or on file in any court, or clerk's or recorder's office, or other public office of a county, shall be lost or burned or otherwise destroyed, the same may be reinstated and restored in the manner hereinafter provided.

SEC. 5348. Any person having obtained an allowance, judgment or decree, either for money or any kind of property, or the performance of any act, in the circuit or other court of any county, against any person, may file in the office of the clerk of such court his petition, setting forth therein the amount, nature and substance of said allowance, judgment or decree, and that the same has been lost or destroyed; and upon the hearing of said petition, if the said court is advised of the truth of the matter contained in said petition, it shall thereupon order, adjudge or decree, as the case may be, that the same, in conformity with the allegations in said petition, be reinstated upon the records of said court, to have the same force and effect, and to relate back and take effect from the time when the original allowance, judgment or decree was rendered.

SEC. 5349. In case the records or original papers on file in any court in any cause pending therein and undisposed of shall be lost or destroyed, any person legally interested in any manner whatever in any such matters or proceedings may file, in the office of the clerk of the court in which said matter or proceeding is pending, his petition, setting forth the nature and substance of said

matter or proceedings, or of said original papers filed and destroyed as aforesaid, and praying that the same may be reinstated upon record; and thereupon, if the court be satisfied and advised of the truth of the allegation in said petition, it shall order, adjudge or decree that the same, pursuant to the allegation of the said petitioner, be filed and reinstated upon the records of said court, to have the same force and effect, and to relate back and take effect from the time when the original was filed as aforesaid, or the original matter or proceedings were had.

SEC. 5350. In all cases where any deed of conveyance, title bond, mortgage, deed or other written muniment of title of or concerning any property, either real or personal, which by law could be admitted to record, and which may have been admitted of record in any county, and the record thereof has been lost or destroyed, but the original of which said instrument of conveyance, or a copy duly certified according to law, is in the possession of the person entitled to the same, said original or duly certified copy of the same may be recorded anew in the office of the clerk and *ex officio* recorder of said county, and said record shall relate back and have full force and effect from the date of the first record of the same. In case no original or duly certified copy shall have been preserved, then any person interested in the same may file his petition in the office of the clerk of the circuit court of such county at least thirty days before the first day of the term of the court at which such application is intended to be made, setting forth the names and relations of the different parties to said instrument of conveyance, and the subject matter thereof, and praying that the same may be ordered to be admitted of record in the office of the recorder of such county; and if the court be sufficiently advised of the truth of the matters contained in such petition, it shall decree that the prayer of said petition be allowed, and that a copy of said petition and decree be certified, under the seal of said court, to the recorder of the said county, to be by him recorded, and the record thereof shall relate back and have full force and effect from the date of said original record.

SEC. 5351. No reinstating order, sentence or decree specified in the three preceding sections shall be rendered by any court unless the petition therein required to be filed shall be verified by affidavit, and shall have been filed in the office of the clerk of said court thirty days previous to the term at which such application is intended to be made; and *provided, further*, that due notice of such intended application (setting forth, in a brief manner, the object and intent of said application) be given to the adverse party or parties, either by personal service by delivering a copy of the same in writing at least thirty days before the first day of the term of the court at which such intended application is to be made, or by publication in some newspaper published in said county (†) for two consecutive weeks, the last publication to be at least six weeks before the first day of the term of the court at which such intended application is to be made. *Provided, however*, that if there be no newspaper printed in said county, then said publication shall be made in some newspaper authorized to publish said notice as provided in section 4358.

SEC. 5352. In cases where any marriage has been legally solemnized in any county, and the certificate of such marriage, required by law to be filed in the

(†) The newspaper must be such as is authorized to publish legal advertisements in the county where it is printed. See SEC. 4356.

office of the recorder for said county, together with the record thereof, shall be lost or destroyed, it shall be the duty of the person who solemnized such marriage, at the request and on the demand of either of the parties between whom the marriage was solemnized, to furnish, under his hand, a certificate of such marriage, which said certificate, in addition to setting forth the date of such marriage and the names, ages and residence of the parties at the time such marriage ceremony was performed between them, and that he performed the marriage ceremony between them, shall also set forth in what capacity the person granting such certificate acted, whether as a judge, justice of the peace, minister, priest or otherwise, at the time of the solemnization of such marriage, and that the original certificate of such marriage was made out by him and duly filed in the office of the clerk and recorder for said county, as required by law, and said person so receiving said certificate may, within ninety days after procuring the same from the person who solemnized such marriage, file the same in the office of the clerk and recorder of such county, whose duty it shall be to record the same in his record of marriage certificates; and said certificate shall relate back and have full force and effect from the date of the solemnization of such marriage.

SEC. 5353. In case the person who solemnized such marriage has departed this life, or resides beyond the limits of this state, so that such certificate can not be obtained, then the parties between whom such marriage was originally solemnized, or the one surviving, if either be dead, or their heirs, by their guardian, in case both said parties are dead, wishing to reinstate the record of such marriage, may file their petition in the office of the clerk of the said circuit court, setting forth therein the substance of the original marriage certificate, or the time when and the person by whom such marriage was performed, and in what capacity, whether as judge, justice of the peace, minister or priest, and that said certificate, with the record thereof, has been lost or destroyed; and, upon hearing of said petition, if the said court is advised of the truth of the matters contained in the same, it shall decree that the same be reinstated upon the records of the recorder's office, and the clerk of the court shall certify a copy of said petition and decree down to the recorder, who shall record the same, and the same shall relate back and have the same force and effect from the time when the marriage ceremony was performed, as though the original record had never been destroyed. *Provided*, that no such decree shall be made or rendered by said court unless said petition shall have been filed in the office of the clerk of said court, verified by the affidavit of the petitioner, or some other reputable person for him, at least thirty days before the commencement of the term of the court to which said petition is addressed, and shall have caused a notice of such intended application to have been published in some newspaper printed in said county (*) at least six weeks before the commencement of said term, calling on all persons who might feel themselves concerned to come forward on or before the second day of said next term and show cause, if any they can, why such record should not be reinstated upon the records of the recorder of said county. *And provided, however*, that if no newspaper be printed in said county at the time of said publication, then said publication may be made in some newspaper authorized to publish said notice, as provided in section 4358.

(*) See note (f) *ante*.

SEC. 5354. In all cases where any married woman shall have availed herself of the provisions of the statute in that behalf, and shall have filed in the office of the recorder of any county a schedule of the property to which she is entitled by law, and the same shall be lost or destroyed, such married woman may file in the office of the clerk of the circuit court of such county her petition, setting forth a full description of the nature of the property and the manner in which she derived title to the same, and setting forth that a schedule of the same, as required by law, had been filed in the office of the recorder for said county, stating, as near as may be, the time when the same was filed, and praying that the same may be reinstated and admitted of record in the recorder's office of said county, which petition shall be verified by the affidavit of the petitioner, or of some other disinterested reputable person for her, and the court, being sufficiently advised of the truth of the matters in said petition set forth, shall grant the prayer of said petition, and shall direct a copy of said petition and decree of the court granting the prayer thereof to be certified by the clerk of said court under seal, and the same shall be recorded in the recorder's office of said county, and shall relate back to and have full force and effect from the date of the filing of the original schedule of said property for record. *Provided*, that no such decree shall be rendered by said court unless said applicant shall have previously given public notice, addressed to all whom it might concern, by publication for two consecutive weeks in some newspaper published in said county (**), if any be published therein; if not, then in some newspaper authorized to publish said notice, as provided in section 4358, of said intended application at least six weeks before the commencement of the term of court at which such application is to be made.

SEC. 5355. In all cases where the bonds of executors, administrators or guardians in any county shall be lost or destroyed, it shall be the duty of the judge of the court of probate of said county to require all such executors, administrators or guardians to file in said court a report, in which they shall set forth, as far as possible for them so to do, their proceedings as such executors, administrators or guardians, and set out, as far as possible, the amount and conditions of their bonds originally given, and the names of their securities; and, after filing such report, the court shall immediately order the clerk to issue citations against all the securities named in said report as having been signers of such executor's, administrator's or guardian's bond, which citation shall command the said securities to appear before said court, on or before the second day of the next succeeding term of said court after the issuance of such citation, and show cause, if any they can, why the bond so reported shall not be established and reinstated upon the records of said court with like effect as the original bond, and, at the return term of such citation, the court shall proceed to hear the allegations and proofs of the parties, in case opposition is made to the reinstating of such bond, and determine the same as the right thereof shall appear; but, if no opposition be made, or if the finding of the court shall be against such obligors in said bond, then the court shall order that said copy set forth in said report be reinstated as the original bond, and the same shall be by the clerk recorded in the book kept by him in his office for that purpose, with a copy of the order reinstating the same. *Provided*,

(**) See note (†) ante.

that no such order shall be entered in any case unless such securities have had thirty days' notice before the commencement of the term of the court at which such citation is returnable. And any executor, administrator or guardian who shall fail to make any such report specified in the preceding portion of this section, when required so to do by order of the court, within thirty days after the making and entering of such order, and being notified of the same, shall incur the same pains and penalties that are prescribed by law for failure to make any settlement required by existing laws, and the court, at the next succeeding term after such failure, shall revoke his letters, and such executor's, administrator's or guardian's powers shall from thenceforth cease.

SEC. 5356. In adjudicating upon any petition filed under the provisions of this act, like proceedings shall be had as upon other cases pending in said court, with the same right of appeal and to writs of error. *Provided*, that nothing in this act contained shall be so construed as to prevent any of the lost or destroyed records herein provided for to be reinstated from being reinstated and established by any other mode known or recognized by existing laws.

SEC. 5357. A duly certified copy of the record of any instrument, order, judgment or decree made by virtue of this act shall be received in evidence in any of the courts of this state without any further proof thereof, and shall be *prima facie* evidence of the loss of the original upon which said record, order, judgment or decree is based, and of the contents thereof (a). *Act Jan. 10, 1855, and act Jan. 10, 1857.*

LIABLE TO LOSS, HOW PRESERVED.

SEC. 5358. The county court of any county is authorized to have transcribed into well-bound books, suitable for that purpose, all records now contained in books that, in the opinion of said court, are in a condition unfit for preservation.

SEC. 5359. Said transcripts, after being submitted to the court, examined, compared and adopted, shall take the place of and be regarded as the original record, and as such shall be deposited with other records in the proper office. *Act July 23, 1868, secs. 1, 2.*

(a) The special act of January 10, 1855, provided this mode of proceeding for the restoration of the public records of the County of Prairie, which had been destroyed by fire.

By act of January 10, 1857, the act of January 10, 1855, was declared to be "a general law for the state, and made to extend to all cases of lost, destroyed or burned records."

CHAPTER CXXIII.

PUBLIC CONTRACTS—LETTING OF, ETC.

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5395. Bills for printing, binding, etc., payable in United States currency.
5396. Officers of state to procure stationery from and have printing done by contractors.
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CONSTITUTIONAL PROVISIONS.

SECTION 5360. All stationery, printing paper, fuel, for the use of the general assembly and other departments of government, shall be furnished, and the printing, binding and distributing of the laws, journals, department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the general assembly and its committees, shall be performed under contract, to be given to the lowest responsible

bidder, below such maximum price and under such regulations as shall be prescribed by law.

SEC. 5361. No member or officer of any department of the government shall in any way be interested in such contracts, and all such contracts shall be subject to the approval of the governor, auditor and treasurer. *Art. XIX, sec. 15, Const.*

BOARD OF COMMISSIONERS TO LET CONTRACTS.

SEC. 5362. The governor, auditor and treasurer of the state shall be *ex officio* commissioners to superintend the letting of the public contracts for all the purposes set forth in section 5360, and shall discharge those duties in the manner hereinafter prescribed (a).

SEC. 5363. The governor shall be chairman and the auditor secretary of the board, and they shall keep a record of their proceedings in a neatly-bound book, kept for that purpose. Two of said commissioners shall constitute a quorum for the transaction of any business required under this act. *Provided*, that all contracts entered into as hereinafter provided by said board of commissioners, before they become binding upon the state, shall receive the approval of the governor, auditor and treasurer, in their official capacity. *Act Nov. 28, 1874, secs. 1, 2.*

TIME OF LETTING CONTRACTS—FOR WHAT SERVICES, ETC.

SEC. 5364. The board of commissioners, immediately upon the approval of this act by the governor, and every second year thereafter, at the time prescribed in section 5367, shall let to the lowest responsible bidder or bidders therefor, separately, the following contracts for services and supplies, each contract to be for the furnishing of the supplies and the performance of the work specified therein for the term of two years from and after the date the same is executed, viz.:

First. For the furnishing of all writing paper, inks, pens, quills, mucilage, wafers, pencils, rulers, twine, wrapping paper and such other articles of office stationery as are required for the use of the general assembly and all the other departments of the state government during said term.

Second. For all printing paper, and the printing of the laws, journals, department reports and all the printing, of whatever description or character, required for the use of the general assembly and all the other departments of the state government during said term.

Third. For the binding and distributing of the laws, journals, department reports, and all other binding of whatsoever description required for the use of the general assembly and all other departments of the state government during said term.

Fourth. For all the fuel required for the use of the general assembly and for all other departments of the state government during the said term.

Fifth. For the repairing and furnishing of the halls and rooms used for the meeting of the general assembly and its committees during said term.

(a) The legislature has no power to deprive one of the benefit of a contract lawfully made by the commissioners. *Berry v. Mitchell*, 42—243.

Sixth. Such other contracts as the legislature may make it the duty of the board of commissioners to let to the lowest responsible bidder during said term.

SEC. 5365. When the public contracts mentioned in section 5364 are to be let, the commissioners shall proceed as follows: They shall give notice by advertisement for one week in one or more daily and weekly newspapers printed at the capital of the state, of most extensive circulation throughout the city and state, of the time of letting all contracts mentioned in said section, stating that separate sealed proposals for the furnishing of the supplies and the performance of the work set out in each of said contracts are invited and will be received by the board of commissioners at the office of the auditor of state, up to the hour of ten o'clock A. M. of the fifteenth day after the date of the first publication of said advertisement.

SEC. 5366. Each proposal submitted shall be addressed to the commissioners and indorsed respectively, "Proposals for Stationery," "Proposals for Printing," "Proposals for Binding," "Proposals for Fuel," "Proposals for Furnishing," etc., etc., as the bids may be for any of the said contracts.

SEC. 5367. After the first letting of contracts directed in section 5364, the commissioners shall give the notice of subsequent lettings at least six months before the expiration of the existing contracts, in order that the new contractors shall have sufficient time to become fully prepared to enter upon their duties promptly at the end of the next preceding contracts. But the notices of such subsequent lettings shall be published thirty days, instead of one week, in the same manner as at the first letting hereunder (b).

SEC. 5368. Each person or firm that may present a bid to the commissioners shall inclose in the same envelope with the bid a good and sufficient bond, signed by the bidders and two or more securities, in the penalty of not less than ten thousand dollars each in the contracts for stationery and binding, thirty thousand dollars in the contracts for printing, and five thousand dollars in the other contracts (unless the commissioners shall fix the penalties at different and greater sums), conditioned that the several bidders will faithfully and in good and workman-like manner perform and execute, of good and sufficient materials, all the work, and furnish all the supplies according to the letter of the contract in that behalf, as stipulated in this act.

STATIONERY, FUEL, REPAIRS, ETC.

SEC. 5369. The commissioners shall be governed by the appropriations for the specific contracts, and by the wants and requirements of each of the different offices of the legislative, executive and judicial departments, after consultation with the officers in charge of them as to the articles and quality of writing paper and other stationery, fuel and furniture and repairs for the legislature, and in the advertisement inviting proposals they shall specify the articles, quality of them, and services and extent of repairs needed, and the time and manner of their being supplied under each of these separate contracts.

(b) Contracts for public printing can be let only in the manner and upon the notice provided by the statute, and if, upon opening the bids, there is no lowest bid, the board must give for another bidding the full notice required for the first. A contract upon less notice is voidable at the election of the state. *Woodruff v. Berry*, 40--251.

PRINTING AND BINDING.

SEC. 5370. Proposals for printing shall specifically state the price per one thousand ems for the composition of all book and pamphlet printing; price per token of two hundred and forty sheets, medium or less size, for the press-work of all book or pamphlet printing; the price per quire of all press-work of all blanks, circulars and other work of like character on flat-cap, or a paper of a less size, for the first quire, and per quire for any number of quires additional; the price of press-work per quire of all blanks of a larger size than flat-cap for the first quire, and per quire for any number of quires additional; the rate per one hundred signatures, or a less number, for the folding and stitching of all small pamphlets ordered; the rate per one hundred signatures for folding, binding, etc., the laws, journals, reports, and such other public documents as shall be required to be bound, in covers, full-bound, half-bound, in calf, in sheep, and in muslin; the rate per copy for pasting and covering pamphlets, including paper; the rate per hundred copies for arranging in packages suitable for distribution of the laws, journals and reports; the rate per quire and form for ruling the various grades of blanks for use of the state, when but a single form is struck, and per quire for each additional form; the price per pound, for each grade of paper, at which the bidder will furnish book, news, flat and record papers for printing or binding, said paper to be of such size, weight to the ream and quality as the commissioners shall approve and direct; the price per one thousand envelopes, one grade of the size of six and one-half (government three-cent or letter), nine and ten (official sizes.) *Ib.*, *secs.* 3-7.

SEC. 5371. The commissioners provided for by section 5362 are hereby directed and required, in giving out the contracts for all public printing required by law to be done, to advertise and receive bids separately, for, first, the governor's messages; second, auditor's reports; third, treasurer's reports; fourth, secretary of state's reports; fifth, attorney-general's reports; sixth, reports of the commissioner of state lands; seventh, reports of receiver of Real Estate Bank lands; eighth, reports of the superintendent of public instruction; ninth, all reports of the officials of the State Penitentiary; tenth, all reports of the officials of the State Industrial University; eleventh, all reports of the officials of the Deaf-Mute Institute; twelfth, all reports of the officials of the School for the Blind; thirteenth, all reports of other officials of the government not embraced in the foregoing classes; fourteenth, all acts of the general assembly; fifteenth, the journals of both houses of the general assembly, should the same be authorized to be printed; sixteenth, all bills, resolutions, memorials, reports of committees and other printing required to be done for the immediate use of either house of the general assembly while in session; seventeenth, all blank forms for the use of the various departments of the government; eighteenth, all other public printing of every character and description required to be done and not embraced in either of the above-named classes.

SEC. 5372. Said commissioners shall advertise and let each of the foregoing classes of public printing to the lowest responsible bidder or bidders therefor. *Act March 11, 1879.*

OPENING BIDS, AWARDING CONTRACTS, ETC. (*).

SEC. 5373. At the time and place designated in the said advertisement for the opening of the bids, the commissioners, or a majority of them, in the presence of such persons as choose to attend, shall open all the bids submitted, and a majority of said commissioners shall award each of the said contracts, respectively, to the person or persons who, after due deliberation, they shall find to be the lowest bidder in the aggregate for the same. Nothing herein contained shall be construed to prevent more than one contract being taken by the same person or persons, when the bid submitted shall be the lowest responsible bid. If two or more competing persons bid the same and the lowest price in the aggregate for the same contract, the commissioners shall award the contract to such one of them as, in the opinion of the majority, will best subserve the interest of the state, or let the contract anew at their option.

SEC. 5374. Upon the approval of any contract, the board of commissioners shall notify the successful bidders that their respective proposals are accepted.

SEC. 5375. If, from death or any other cause, the successful bidders should fail or refuse to proceed with the execution of any contract entered into under the provisions of this act, at the time fixed in the letting of such contract, the commissioners shall enter into contract with the next lowest bidder; or, in their discretion, let the contract anew. *Act Nov. 28, 1874, secs. 8 and 9.*

SEC. 5376. The following regulations shall be observed by the commissioners in considering the several contracts to be let, as provided in section 5364, and the following prices are established as the maximum of the rates that will be paid by the state on any bid, and which, if exceeded in any proposal, shall invalidate it:

Contract for Fuel.

For straight, hard hickory or ash wood of one hundred and twenty-eight cord feet, four feet long, per cord, four dollars.

For cutting or sawing in two lengths, per cord, fifty cents. For cutting or sawing in three lengths, per cord, seventy-five cents. For stone coal, per ton, six dollars.

Contract for Stationery.

Writing Paper—Letter, foolscap, legal-cap, folio or larger, first quality, ruled, per pound, thirty-five cents.

Same, second quality, ruled, per pound, thirty cents.

Ledger Papers—Ruled, first quality, per pound, forty-five cents.

The commissioners shall ascertain the amount of all the other stationery required for all the departments for two years, and, after fixing the maximum cost within the appropriation for the purpose, shall let its furnishing in the above contract, all to be supplied as it is needed upon the requisition and to the amount limited by the commissioners to each state officer, executive, legislative or judicial.

(*) As to a combination among bidders to stifle competition, see *Woodruff v. Berry*, 40—251.

Contracts for Printing.

Composition—Plain work, per one thousand ems, eighty-five cents; figure work, per one thousand ems, one dollar; rule work, per one thousand ems, one dollar and fifty cents; rule and figure work, per one thousand ems, one dollar and fifty cents.

Press Work—Book or pamphlet, per token of two hundred and forty sheets, medium or less in size or number, eighty cents. Blanks for similar work of any description, not larger than flat-cap, for the first quire, two dollars and twenty-five cents; for each additional quire ordered at the same time, twenty-five cents; excepting than when said blanks are larger than a sheet of flat-cap or are printed headings of rule or tabular work, or record books, or contain so much composition in excess of three thousand eight hundred ems as to require additional compensation, then the contractors shall be allowed a reasonable advance upon the prices above specified for flat-cap or blanks of less size, which said advances shall be passed upon by the officers authorized to settle accounts as herein provided. A quire of blanks as used in this act shall be construed to mean twenty-four blanks of the size of a sheet of letter or flat-cap paper, or forty-eight blanks of any smaller size, or twenty-four blanks of any smaller size which are printed on both sides of the paper.

On envelopes, per one thousand impressions, two dollars.

Contract for Printing Paper.

Envelopes, No. 6½, per one thousand, two dollars and fifty-cents.

Envelopes, No. 9, per one thousand, three dollars and fifty cents.

Envelopes, No. 10, per one thousand, four dollars.

Flat paper, first grade, per pound, twenty-five cents.

Flat paper, second grade, per pound, twenty-five cents.

Book paper, first grade, per pound, twenty cents.

Book paper, second grade, per pound, fifteen cents.

All rag newspaper, first grade, per pound, twelve and one-half cents.

Record paper, first grade, per pound, fifty cents.

Ruling—Folio post or larger, one form, per quire, forty cents.

Folio post, each additional form, per quire, ten cents.

Less than folio post, single form, per quire, twenty cents.

Less than folio post, each additional form, per quire, ten cents.

Folding and Book and Pamphlet Work—Per one thousand signatures, one dollar.

Pasting, Trimming and Covering—Per hundred copies, for each one hundred signatures, or fraction less, one dollar.

The following standards of size are hereby established, by which all pages and forms of book, pamphlet and bill work executed for the state shall conform in make-up and measurement: A page of medium octavo shall measure, in small pica type, twenty-nine ems in width by fifty ems in length, including foot-line, measuring not over fifteen hundred ems in all. A page of royal octavo shall measure, in small pica type, thirty-one ems in width by fifty-seven ems in length, including foot-line, not over eighteen hundred ems in all. The pages

of other forms of medium or royal shall be proportioned. A page for a legislative bill shall measure, in small pica measurement, forty-one ems in width by eighty-three ems in length—thirty-four hundred ems in all. A reglet of pica thickness shall be inserted between the lines of all bills. The measurement of all composition upon books or pamphlet work in estimating shall include foot and head-lines, or be from the extreme points of the type. The composition of all book and pamphlet work shall include all such fractional and blank pages as are necessary in the manufacture of the work in good and workman-like manner. But one charge shall be allowed for the composition for all books, pamphlets or documents ordered to be printed by both branches of the legislature, and no charge or allowance shall be made for composition when extra or additional copies are ordered to be printed. But this rule shall only apply, in the first instance, to orders made for the same document on the same or a succeeding day by both branches of the legislature, and, in the second instance, to orders for additional copies which are made before the original order is filled.

Contract for Binding.

Full calf, per one hundred signatures, medium or less, including sewing, one dollar and twenty-five cents; full sheep, same, one dollar; half binding, one dollar; muslin backs and paper covers, twenty-five cents; pamphlet binding, plain covers, including sewing, two cents; preparing books for distribution, per one hundred copies, one dollar and fifty cents; blank books of record, full bound, Russia ends, fronts and bands, twenty-pound cap size, per quire, one dollar and twenty-five cents; thirty-two-pound demy, per quire, one dollar and fifty cents; forty-pound medium, per quire, one dollar and seventy-five cents; forty-two-pound royal, per quire, two dollars and twenty-five cents; fifty-two-pound super-royal, per quire, three dollars and twenty-five cents; sixty-six-pound imperial, per quire, four dollars. *Ib.*, sec. 10, as amended by act March 17, 1879.

SEC. 5377. The commissioners are required to contract for lower rates than maximum, if possible; and the commissioners are hereby authorized to reject each and every bid, if they deem them too high, and let the contract anew. *Ib.*

SEC. 5378. The letting of the contract, under the act of which this act is amendatory, shall not cost more than one hundred dollars. *Act March 17, 1879, sec. 2.*

SEC. 5379. The contractors for printing and binding shall be allowed six months, or, at the discretion of the commissioners, a sufficient time, from the adjournment of the legislature in which to complete the printing and binding all laws, journals, public documents and other work ordered to be printed and bound.

SEC. 5380. The board of commissioners, in case of a dispute or difference with the contractors, may call to their aid one or more employing or skillful practical printers or binders as experts to aid in examining the accounts of the contractors for work performed or material furnished the state, who shall not be in any manner interested in the contracts for printing or binding, etc. The persons so employed shall be paid five dollars per day while so necessarily em-

ployed, to be paid by the state, if the account be found correct, or by the printer or binder, if the account be erroneous or fraudulent.

SEC. 5381. After the completion of each piece of work ordered printed by the legislature or other state officers, in pursuance of law, the commissioners shall, as soon as may be, settle the accounts of the contractor therefor, and shall review the estimate of the work, and estimate the quantity of paper which has been necessarily used by the contractor in executing the printing ordered, and shall pass and approve the just account therefor. *Provided*, the contractors shall be allowed not exceeding four per cent. for paper wastage in performing the printing as aforesaid.

SEC. 5382. The contractor shall preserve one copy of each piece of work done by him as a voucher and sample of work performed by him, which shall be presented with his account, and he shall account for all paper advanced by the state, less the allowance for wastage, and shall allow to the state the contract rates for any supplies of paper so advanced by the state, which amount shall be deducted from the contractor's account; and the contractors shall not use in their own private business, or otherwise than in the fulfillment of their contract, any paper so advanced by the state, under a penalty of twenty dollars per quire for each quire so used, to be recovered by the board, for the use of the state, in a court of competent jurisdiction. And the accounts of the contractors shall not be paid in full until said account for paper advanced is settled to the satisfaction of the commissioners. *Act Nov. 28, 1874, secs. 11-13.*

SEC. 5383. The printing contractor shall deliver to the binding contractor every form of laws, journals, reports or other documents required to be stitched, sewed or bound in good order, as fast as they are printed and folded, and he shall deliver at least one thousand copies of the laws to the said binding contractor within twenty days after the adjournment of the general assembly, and one thousand copies each successive week thereafter, until the entire number ordered to be printed is furnished; and the binding contractor shall, within twenty days after the said copies have been delivered to him by the printing contractor, deliver to the secretary of state, or other officer entitled to the possession of the work, one thousand bound copies thereof, and one thousand bound copies each succeeding week, until the entire number ordered to be bound shall be delivered; and if either the printer or binder shall fail to deliver the work as above required, he shall pay to the State of Arkansas, as a fine for such failure, one hundred dollars for each day he shall fail so to deliver the same. *Ib., sec. 14, as amended by act March 10, 1877.*

SEC. 5384. In printing messages, reports and other documents ordered to be printed by the legislature or by any officer, in pursuance of law or resolution of either house of the legislature, the contractor may attach covers and prefix a title page to each message or report of a state officer or superintendent of a state institution; but he shall dispense with full title pages in reports of committees and other short documents, and affix only a half-title at the top of the first page of every such document.

SEC. 5385. The secretary of state shall cause true and accurate copies of all the laws, joint resolutions and memorials to be made out and delivered to the contractors for printing as fast as the printers may need the same in the fulfillment of the contract as required in this act. The date of approval by the governor shall be stated at the end of each act, omitting the name and style of

the governor and presiding officers of the two houses. Prefixed to each volume of laws and journals there shall be a table of contents, and at the end thereof a full and complete index, to be prepared by the printer, and the commissioners shall allow a sufficient compensation therefor. The contractor for printing shall furnish the secretary of state with a proof-sheet of each form of the laws, in their course of publication, at his office, and a reader to assist the secretary of state in comparing the printed proofs with the original rolls. *Ib.*, secs. 15 and 16.

MISCELLANEOUS PROVISIONS.

SEC. 5386. Before the commencement of each regular session of the general assembly there shall be printed by the printing contractor, in time for delivery with the governor's message, the following number of copies of official reports and documents:

Governor's message, four thousand copies.

Secretary of state's reports, two thousand copies.

Auditor's report, two thousand copies.

Treasurer's report, two thousand copies.

Attorney-general's report, two thousand copies.

Commissioner of state lands' report, two thousand copies.

Receiver of Real Estate Bank lands' report, two thousand copies.

Penitentiary report, two thousand copies.

Adjutant-general's report, two thousand copies.

Industrial University report, two thousand copies.

Blind Institute report, two thousand copies.

Deaf-Mute Institute report, two thousand copies.

One thousand copies of each of the above reports shall be for the use of the general assembly, and the balance shall be bound and delivered to the secretary of state for distribution according to law, and for preservation among the state archives. All orders for the printing of public documents, in addition to the above, shall be made by joint resolution. *Provided*, either house may order to be printed any bills or reports of committees of such house without the concurrence of the other house of the general assembly.

SEC. 5387. There shall be printed in separate volumes, at the close of each session of the general assembly, unless some other or greater number is ordered thereby, five thousand copies of the public and private acts, joint resolutions and memorials of the general assembly, and three thousand copies each of the journals of each house. One thousand copies of the reports of the supreme court shall be printed and bound from time to time by the contractors (*).

SEC. 5388. The acts, journals, reports of the supreme court and all other public documents shall be printed and bound in medium octavo form, in type not larger than small pica nor smaller than nonpareil, as the text, tabular work and annotations may require.

SEC. 5389. All acts of the legislature of a public nature shall be kept separate from those of a private nature in printing, and so of resolutions and memorials; but acts of one session shall be bound in one volume, if they do

(*) See SECS. 1335-1338, which provide for printing and binding reports of supreme court.

not exceed one thousand pages at any one session. *Ib.*, *secs. 17 and 18, as amended by act March 10, 1877.*

SEC. 5390. The several officers of the executive, legislative and judicial departments, and the clerk and reporter of the supreme court, may make requisitions on the contractors for the printing of such blanks and the making of such records as will promote economy in their offices and facilitate the business thereof, due regard being had for the appropriations for the expenses of their respective offices. *Ib.*, *sec. 19.*

SEC. 5391. All printing and binding required by the contract shall be done in a neat, skillful and workman-like manner, and without needless delay. *Ib.*, *sec. 20, as amended by act April 12, 1883.*

SEC. 5392. With the approval of a majority of the board of commissioners, when a large quantity of public printing or binding, or of material of the same quality, is required, the auditor may advance to the contractor, from time to time as the work progresses, any sum not exceeding eighty per cent. of the amount of the work done or cost of the quantity of material required.

SEC. 5393. If any report, bill or other document is ordered to be printed by the legislature, and no number of copies designated, there shall be printed at the public expense not more than two hundred and forty copies.

SEC. 5394. In the event of the failure or inability of the printing or binding contractors to execute any work or furnish articles which may be required of them by the general assembly, or either house thereof, within a reasonable time after the copy is furnished or requisition is made, the board of commissioners may procure the work to be executed or the order filled by some other person, in the manner hereinbefore provided, and certify the account of such person to the auditor, who shall draw his warrant on the treasurer for the proper amount thereof, who shall pay the same out of any moneys in the treasury not otherwise appropriated.

SEC. 5395. All bills for public printing, binding and stationery, and other contracts provided for in this act, shall be payable in United States currency, and paid out of the respective appropriations for public printing, binding and stationery, and for the expenses of the several officers and departments.

SEC. 5396. All officers of the state authorized to procure stationery, or to have printing or binding of any kind done at the expense of the state, are required to have the same done by the proper contractor or contractors for the public printing, binding and stationery, and no money shall be paid out of the treasury for paper, stationery, printing or binding done in contravention of this section.

SEC. 5397. The auditor shall draw warrants on the treasurer for all accounts rendered upon the contracts let by the board of commissioners after the approval of the same by a majority of the board. *Ib.*, *secs. 21-26.*

CHAPTER CXXIV.

PULASKI CHANCERY COURT.

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ORGANIZATION AND TERMS OF.

SECTION 5398. A separate court of chancery is hereby established, to be held at the seat of government. *Act Jan. 15, 1855, and Jan. 13, 1857.*

SEC. 5399. Said court shall be known and styled "The Pulaski Chancery Court." *Civil Code, sec. 18, as amended 1873.*

SEC. 5400. There shall be held two regular terms of said court in each year, beginning on the first Monday of March and the third Monday of September. *Act Nov. 30, 1875.*

SEC. 5401. The chancellor shall cause a seal, with suitable devices, and proper record-books to be provided for said court, which shall be a court of record, and have the same power to punish for contempt as any other court of record. *Act Jan. 15, 1855, sec. 4.*

SEC. 5402. The judge and clerk of said court shall hold office for the term of two years, and shall be elected by the qualified voters of the state. *Art. VII, sec. 44, Const.*

SEC. 5403. The sheriff of the county where the seat of government is situated shall be the sheriff for the said court.

SEC. 5404. Said clerk and sheriff shall by themselves or competent deputies discharge the duties incumbent on them as such, and the chancellor may also appoint any officers, when it shall be necessary, to carry on or expedite the business of the court, and who shall receive such fees as may be allowed by law for such services as may be performed by them, and, when none are prescribed, such as the chancellor shall deem reasonable, which shall be taxed as costs in the cases in which such services were rendered. *Act Jan. 15, 1855, sec. 6.*

SEC. 5405. Said court may be held at any place at the seat of government most convenient to the chancellor, and may adjourn from day to day and time to time, as necessity may require. *Ib., sec. 7.*

SEC. 5406. The contingent expenses of said court shall be audited and approved by the chancellor, and paid out of the state treasury. *Act Jan. 13, 1857, sec. 11.*

SEC. 5407. Said court shall continue in existence until abolished by law, or the business pending at the adoption of the constitution shall be disposed of, or the pending business be transferred to other courts. *Art. VII, sec. 44, Const.*

JURISDICTION.

Exclusive Jurisdiction in Chancery Causes in Pulaski County.

SEC. 5408. The Pulaski Chancery Court shall have and exercise, within and for the County of Pulaski, exclusive original jurisdiction in all chancery causes cognizable in said county, and no chancery suit shall be brought, tried or determined in the circuit court of said county. *Act Jan. 15, 1855.*

SEC. 5409. The Pulaski Chancery Court shall have the same general jurisdiction in actions by proceedings in equity that is now or may hereafter be conferred upon circuit courts, and all proceedings in the Pulaski Circuit Court which by law should be transferred to equity shall be transferred to the said chancery court. *Civil Code, sec. 18, as amended 1873.*

Jurisdiction in Matters Relating to the Real Estate Bank.

SEC. 5410. All suits in chancery to enforce payment of the stock bonds, or to foreclose the stock mortgages given to the Real Estate Bank of the State of Arkansas, or to protect or enforce the interests and rights of the holders of the bonds that were issued by the state to the Real Estate Bank, and were sold by the bank, or to protect and enforce the interests and rights of the state on account of her issuance of such bonds and her guarantee of their payment, or to protect and enforce the interests and rights of the receiver of the assets of the Real Estate Bank, shall be brought, prosecuted and determined in said court. *Act Jan. 13, 1857, sec. 1.*

PLEADINGS AND PRACTICE IN.

SEC. 5411. Said court shall proceed according to the rules, usages and practice of courts of chancery, and enforce its orders and decrees by execution, or in any other manner proper for a court of chancery, and shall have jurisdiction in all cases where adequate relief can not be had at law, or where, according to said rules, usages and practice, it is proper for a court of chancery to interpose and grant partial or entire relief, or prevent injustice from being done. *Act Jan. 15, 1855, sec. 10.*

SEC. 5412. Said court, to execute its powers and to maintain its jurisdiction, shall be authorized to issue writs of subpœna, attachments, sequestration, assistance, *procedendo*, prohibition, *mandamus*, *supersedeas*, *certiorari* and *habeas corpus*, and other necessary and remedial writs and process, and to hear and determine the same. *Ib., sec. 11.*

SEC. 5413. Said court shall have full power to appoint a master in chancery, and special masters in chancery when necessary, and receivers, and require

such security from the latter as shall be deemed fit and proper; and all receivers shall be required to make full reports and settlements at least every six months, under direction of the chancellor; and said court or chancellor may also appoint examiners or commissioners to take testimony, which may be taken in the same manner and under like notice as in suits in chancery in the circuit courts; and juries may be summoned to try questions arising in chancery causes in the same manner as may now be done in chancery causes in the circuit courts, or as might have been done according to the practice and usages of courts of chancery in England anterior to the revolution. *Ib.*, sec. 12.

SEC. 5414. It shall be the duty of the chancellor, in all cases, to reduce his opinions to writing, and deliver the same to the clerk, who shall record the same in an opinion-book kept for that purpose, and in all appeals such opinions shall be embodied in the transcript and sent to the supreme court. *Ib.*, sec. 16.

SEC. 5415. Said court shall always be open for the purpose of filing bills, petitions, answers, pleas, demurrers and other pleadings, for issuing and returning *mesne* and final process, and for making and directing all interlocutory notices, orders, rules and other proceedings whatever preparatory to the final hearing of all causes pending therein upon their merits; and it shall be competent for the chancellor of said court, upon reasonable notice to the parties in the clerk's office or at chambers, and in vacation, as well as in term, to make, direct and award all such process, commissions and interlocutory orders, rules and other proceedings whenever the same are not grantable, of course, according to the rules of court.

SEC. 5416. The law regulating the practice in equity cases in the circuit courts shall apply to the Pulaski Chancery Court, except that the chancellor may make such rules as he deems proper in relation to filing pleadings and setting down cases for hearing. *Civil Code, secs. 801 and 805.*

PROCESS—TRANSCRIPTS.

SEC. 5417. The clerk of said court shall have power to issue all legal process in the suits begun in and transferred to said court, and such process shall be directed to the proper officer or person of the county where the defendant resides or can be found, or where the property to be affected by the suit is situated; and, in the execution and return of such process, the officer or person to whom it shall be directed shall be answerable to the court issuing the same.

SEC. 5418. When any decree or judgment shall be made or rendered in said court against persons or property not within its territorial jurisdiction, an authenticated transcript of the entry made in the judgment docket, as required by law, shall be immediately transmitted to the proper clerk in the county where the defendant may reside or may have real estate, or where the real estate sought to be affected by the decree or judgment is situated, and the clerk receiving such transcript shall at once file for record, and shall record the same upon his own judgment docket; and such judgment or decree shall be a lien upon real estate in the county where its transcript is filed, as if the same had been made or rendered in that county; and such transcript may be filed with like effect in every county in which the defendant to the decree or judgment may own real estate. *Act Jan. 13, 1857, secs. 6, 7.*

APPEAL.

SEC. 5419. Appeals from the final orders and decrees of the said court of chancery shall be to the supreme court, in the same manner as from final orders and decrees in the circuit courts in chancery; and security shall be given in the same manner, except that the state shall not, in any case, be required to give security. *Act Jan. 15, 1855, sec. 13.*

CHAPTER CXXV.

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GENERAL SYSTEM OF INCORPORATION OF.

SECTION 5420. Any number of persons, not less than five, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad by complying with the following requirements: When stock to the amount of at least one thousand dollars for every mile of said road so intended to be built shall be in good faith subscribed, the said subscribers may elect directors for said company (a). Thereupon they shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the number of years the same is to continue (which shall not exceed ninety-nine years), the amount of the capital stock of the company (which shall be the actual cost of constructing the road), together with the cost of the right of way, motive power and every other appurtenance for the completion and running of said road, as nearly as can be estimated by a competent engineer; the number of directors (and their names) to manage the concerns of the company, who shall hold their office until others are elected; the places from and to which the proposed road is to

(a) See SEC. 5605.

be constructed, and each county into or through which it is intended to pass, and its length, as near as may be, and the names of five commissioners to open books of subscription to the stock. Each subscriber to such articles of association shall subscribe thereto his name, place of residence and the number of shares of stock taken by him in such company. The said articles of association may, on complying with the following section, be filed in the office of the secretary of state, and thereupon the persons who have subscribed, and all persons who shall from time to time become stockholders in such company, shall be a body corporate by the name specified in such articles. *Act July 23, 1868, sec. 1.*

SEC. 5421. Such articles of association shall be null and void, unless there shall be filed in the office of the secretary of state a preliminary survey of the road and five per cent. on the amount of the original stock subscribed thereto shall have been actually and in good faith paid in cash to the directors named in such articles within two years after said articles of association have been filed; nor until there is indorsed thereon or annexed thereto an affidavit, made by at least three of the directors named in such articles, that the amount of stock required by section 5420 has been subscribed, and that five per cent. on the amount so subscribed has actually been paid unto the directors of the company within the above specified time. *Ib., sec. 2.*

SEC. 5422. A copy of any articles of association filed in pursuance of this act, with the copy of the affidavit aforesaid indorsed thereon or annexed thereto, and certified to be a copy by the secretary of state or his deputy, shall in all courts and places be presumptive evidence of the incorporation of such company and of the facts therein stated. *Ib., sec. 3.*

SEC. 5423. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate by the name stated in such certificate, and shall be capable of suing and being sued, and may have a common corporate seal, and may make and alter the same at pleasure, and be capable in law of purchasing, holding and conveying any real estate and personal property whatever necessary for the construction and maintenance of such railroad, and for the erection of all necessary buildings, yards and appurtenances for the use of the same; also, to receive, hold, enjoy and convey any lands that may be given, granted or donated by any individual or state to such company as an inducement to such company to construct such road. *Ib., sec. 4.*

SEC. 5424. The commissioners for opening books of subscription named in the articles of association shall, from time to time, after the company shall be incorporated, open books of subscription to the capital stock of the company, at such places and after giving such a notice as a majority of them shall direct; which books of subscription shall be kept open until seven thousand dollars per mile of the capital stock shall be subscribed, if the corporation shall so long exist. *Ib., sec. 5.*

SEC. 5425. As soon as practicable after such capital stock shall have been subscribed as aforesaid, the commissioners to receive subscriptions thereto shall appoint a time and place for the meeting of the stockholders, to choose not less than five nor more than thirteen directors of such company; such meeting to be held in one of the counties in or through which such railroad is proposed to be constructed, and notice thereof shall be given by said commissioners by

public notice, to be published not less than twenty days previous thereto in a newspaper published in each county through which the road shall be intended to run, in which a newspaper shall be published. Not less than five nor more than thirteen directors shall be chosen at such meeting, by ballot, and by a majority of the votes of the stockholders being present in person or by proxy; and every such stockholder being so present at such election, or at any subsequent election of directors, shall be entitled to give one vote for every share of stock which he shall have owned for thirty days next preceding such election; but no stockholder shall vote at any such election upon any stock except such as he shall have owned for such thirty days. *Ib.*, sec. 6.

SEC. 5426. No person shall be a director unless he shall be a stockholder, owning stock absolutely and in his own right, and qualified to vote for directors at the election at which he shall be chosen; and at least one-third of the whole number of the directors shall, at the time of their election, be residents of some one of the counties in or through which the route of such railroad shall run (*). The directors shall be directors for one year, and until others are elected and qualified in their places. *Ib.*

SEC. 5427. The commissioners named in section 5425 shall be inspectors of the first election of directors, shall openly count the votes and declare the result, and shall, within ten days thereafter, file a certificate thereof, subscribed by them (or a majority of them), in the office of the secretary of state and in the office of the clerk of the county court of each county in or through which such railroad shall be proposed to be constructed, and shall also deliver to the treasurer of such company all moneys received by such commissioners on subscriptions to such capital stock, and all books and papers in their possession relative to such subscriptions. *Ib.*, sec. 7.

SEC. 5428. All subsequent elections shall be held at such time and place, in one of the counties in or through which such railroad shall pass, as shall be directed by the by-laws of the company. *Ib.*

SEC. 5429. A general meeting of the stockholders of any corporation formed under this act shall be holden annually at the time and place appointed for the election of directors; and a meeting may be called at any time during the interval between such annual meetings by the directors or by the stockholders owning not less than one-third of the stock, by giving thirty days' public notice of the time and place of the meeting, in a newspaper published in each county in or through which said road shall run or be intended to run, in which a newspaper shall be published; and, when any such meeting is called by the stockholders, the particular object of such call shall be stated, and if, at any such meeting thus called, a majority in value of the stockholders are not represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business, and if, within said three days, stockholders having a majority of the stock do not attend such meeting, then the said meeting shall be dissolved. *Ib.*, sec. 8.

SEC. 5430. Any such corporation now or hereafter existing under the laws of this state is hereby authorized to fix by its by-laws the time for holding its annual and special meetings of stockholders. *Provided, however,* that at least thirty days' notice of the time and place for holding said meetings shall first

(*) A majority of the directors must be residents and citizens of the state. SEC. 5305.

be given by publication in any newspaper printed in the City of Little Rock. *Act Dec. 9, 1874, sec. 2.*

SEC. 5431. At the regular meeting of the stockholders of any corporation, it shall be the duty of the president and directors in office for the preceding year to exhibit a clear and distinct statement of the affairs of the said company and, at any meeting of the stockholders, a majority of those present in person or by proxy may require similar statements from the directors, whose duty it shall be to furnish them when thus required; and, at a general meeting of the stockholders, a majority in value of the stockholders in said company may fix the rate of interest which shall be paid by the company for loans for the construction of said road and its appendages, may remove any president or any director of said company, and elect others in their stead. *Provided*, notice of such intended removal has been given as required by the last preceding section. *Act July 23, 1868, sec. 9.*

SEC. 5432. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of the company, when it ought to have been made, the company, for that reason, shall not be dissolved, if, within ninety days thereafter, they shall hold an election for directors in such manner as shall be provided by the by-laws of the company. *Ib., sec. 10.*

SEC. 5433. There shall be a president (*) of the company, who shall be chosen by and from the directors, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their respective offices as the company, by its by-laws, may require. *Ib.*

SEC. 5434. It shall be lawful for the directors to call in and demand from the stockholders, respectively, all sums of money by them subscribed, at such times and in such payments or installments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payments shall not be made by the stockholders within sixty days after personal demand, or notice requiring such payment shall have been given or made in each county through which said road shall be laid out, in which a newspaper shall be published. *Ib., sec. 11.*

SEC. 5435. The directors of such company shall have power to make by-laws for the management and disposition of the stock, property and business affairs of such company, not inconsistent with the laws of this state, and prescribing the duties of all officers, artificers and servants that may be employed by such company, and for the appointment of all officers for carrying on all the business within the object and purposes of such company. *Ib., sec. 12.*

SEC. 5436. The stock of such company shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company; but no shares shall be transferable till all previous calls or assessments thereon shall have been fully paid in, or the said shares shall have been forfeited for the non-payment of calls thereon; and it shall not be lawful for said company to use any of their funds in the purchase of any stock in their own or any other corporation. *Ib., sec. 13.*

SEC. 5437. The president and a majority of the directors, within thirty

(*) The offices of the president, secretary and treasurer must be established and kept within the state. SEC. 5506.

days after the payment of the last installment of the capital stock, so fixed and limited by the company, shall make a certificate stating the amount of the capital stock so fixed and paid in, which certificate shall be signed by the president and a majority of the directors, and sworn to by the president and secretary, and they shall, within said thirty days, file and record the same in the office of the secretary of state. *Ib.*, sec. 14.

SEC. 5438. If the directors of any such company hereafter organized under this act shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render such company insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall thereafter be contracted so long as they shall respectively remain in office. *Provided*, that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall, within thirty days thereafter, if absent, file a certificate of their absence or objection with the clerk of the company, and with the clerk of the county court of the county in which the principal office of said company is located, they shall be exempt from the said liability. *Ib.*, sec. 15.

SEC. 5439. If any certificate, or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are such officers thereof. *Ib.*, sec. 16.

SEC. 5440. No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward, or person interested in such trust, would have been if he had been living and competent to act, and held the same stock in his own name. *Ib.*, sec. 17.

SEC. 5441. Every such administrator, executor, guardian or trustee shall be allowed to represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder. *Ib.*, sec. 18.

SEC. 5442. Every such company, before proceeding to construct a part of their road through any county named in their certificate of association, shall make a map and profile of the route intended to be adopted by such company, which shall be certified by a majority of the directors and filed in the office of the clerk of the county court of such county for the inspection and examination of all parties interested therein. *Ib.*, sec. 19.

SEC. 5443. Any railroad company heretofore incorporated or to be hereafter incorporated, having filed, according to law, a map showing the located line of its road, shall thereafter have power to make such modifications in such located line as, in the opinion of its board of directors, will tend to economy of construction or enhance the interest of the company. *Provided*, such modifications shall not vary more than five miles from the line first located; and *provided*, such change or changes in the line shall be indicated by a map filed in the office of the secretary of state. *Act March 21, 1869, sec. 1.*

SEC. 5444: Whenever, in the opinion of the board of directors of any railroad corporation incorporated under the laws of this state, it shall be found impracticable to construct or maintain their road or branches, or any part thereof, upon the location or route heretofore adopted, they shall have power to make such changes therein, not exceeding twenty miles laterally, as in their judgment will best tend to economy of construction, or to promote the business of the road, and to that end they are hereby authorized to abandon any location heretofore made, and to remove the track or rails therefrom to such line as they may hereafter adopt in lieu thereof. *Provided*, such change or changes shall be indicated by a map filed in the office of the secretary of state within three months after the passage of any vote or votes authorizing such changes. *Provided, further*, that nothing in this act contained shall be construed to impair the liability, if any, of any corporation to any individual by reason of such change or changes, or to take away the rights, if any, which any person may have in the premises at the time of such change or changes of location. *Act March 3, 1877.*

SEC. 5445. In order to enable any company or association formed under this act to make a perfect survey and perfect the maps, plats and profiles of the route of any proposed road, engineers, surveyors and all persons attached to their corps or in their employ shall have the right to enter into or upon the premises of any private individual, or corporations public or private, for the purpose of making such surveys, and any individual or individuals, public or private, who shall resist, hinder, or in any manner delay such engineer, surveyor or person in their employ from entering into or upon their premises, or who shall, after such survey has been made, remove, destroy or deface any stakes, mounds or other marks by which such route is designated, the same shall be deemed guilty of felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a period not less than one year nor more than ten years. *Act July 23, 1868, sec. 20.*

SEC. 5446. Every company or association formed under the provisions of this act shall, within two years, file a map and profile of the route intended to be adopted, as provided in section 5442, and shall be entitled to a right of way for a distance of ten miles on each side of such route; and no company or corporation shall be allowed articles of association, or become a body corporate for the purpose contemplated in this act, which shall have a route running parallel or in the same general direction to the one previously incorporated within the said distance. *Ib., sec. 21.*

SEC. 5447. Every such corporation shall possess the general powers, and be subject to the general liabilities and restrictions, expressed in the special powers following, that is to say (b):

First. To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad, and for such purpose, by their officers, agents and servants, to enter upon lands or waters of any person, but subject to responsibilities for all damages which they shall do thereto.

Second. To receive, hold and take such voluntary grants and donations of real estate and other property as shall be made to such company to aid in the

(b) The sixth paragraph of this section, as found in the act, is superseded by sections 1 and 2 of the act of March 20, 1883. See SECS. 5533, 5534.

construction, maintenance and accommodation of such railroad; but the real estate thus received by voluntary grant shall be held, used and disposed of by such company only according to the terms of such grants.

Third. To purchase, and by voluntary grants and donations receive and take, and by its officers, engineers and surveyors and agents enter upon and take possession of and hold and use, all such lands and real estate and other property as may be necessary for the construction and maintenance of its railroad and stations, depots and other accommodations necessary to accomplish the object for which the corporation is created; but not until the compensation to be made therefor, as agreed upon by the parties, or ascertained as hereinafter provided, be paid to the owner or owners thereof, or deposited as hereinafter directed, unless the consent of such owner be given to enter into possession.

Fourth. To lay out its road, not exceeding six rods wide, and to construct the same, and for the purpose of cuttings, embankments and procuring stone and gravel may take as much more land, within the limits of the charter, in the manner provided hereinafter, as may be necessary for the proper construction and security of the road.

Fifth. To construct their road upon or cross any stream of water, water-course, road, highway, railroad or canal which the route of the road shall intersect; but the corporation shall restore the stream or water-course, road or highway thus intersected to its former state, or in a sufficient manner not to have impaired its usefulness.

Sixth. To purchase lands or take them, may change the line (*) of its road whenever a majority of the directors shall so determine, as is hereinafter provided; but no such change shall vary the original route of such road to exceed five miles laterally.

Seventh. To take, transport, carry and convey persons and property on their railroad, by the force and power of steam, of animals, or any mechanical powers, or by any combination of them, and to receive tolls or compensation therefor.

Eighth. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business, and obtain and hold the lands necessary therefor.

Ninth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for any passenger and his ordinary baggage shall not exceed five cents a mile, unless by the act of the legislature, and shall be subject to alteration as hereinafter provided (c).

Tenth. To borrow money to be applied to the construction of their railroad and fixtures, and purchase of engines and cars, and to no other purpose, at such rate of interest as is hereinafter provided. *Ib., sec. 22.*

PURCHASERS OF RAILROAD MAY ORGANIZE AS A NEW CORPORATION, ETC.

SEC. 5448. The purchasers of any railroad at a judicial sale under any mortgage, upon confirmation thereof, or any sale under mortgage or deed of

(*) See SEC. 5443.

(c) See SECS. 5497-5499.

trust that has been or shall be made, or any voluntary sale, shall become possessed of, and shall be entitled to hold, exercise and enjoy, all the corporate rights, powers, privileges, immunities, *charter* and franchises of the company, as fully as the same were held, exercised and enjoyed by said company before said sale, and under any name which the purchasers may elect (*).

SEC. 5449. Upon the filing with the secretary of state of a duly attested copy of the deed and confirmation of sale of any railroad, or charter, or franchise, as herein provided for, or of a deed executed under a sale by virtue of a deed or mortgage of trust, or voluntary sale, such transfer shall be recorded in the same manner and in the same book that the original articles of incorporation are now recorded, and thereupon said purchase shall vest absolutely in said purchasers all right, title, claim and interest which belonged to or were vested in said original corporation by said charter or franchise.

SEC. 5450. The purchasers of any railroad, or franchise, or charter, at a judicial sale under any mortgage, or by purchase under a deed or mortgage of trust which has been or may hereafter be made, or any voluntary sale, may reorganize said company by associating with itself or themselves any number of persons, from whom a board of directors of not less than five nor more than thirteen may be chosen, which board such persons are hereby authorized to select; and they are also authorized to fix the capital stock of such reorganized company at an amount not exceeding the estimated cost of said railroad and equipments when completed, and to distribute the stock.

SEC. 5451. A certificate of said organization setting forth its basis, the amount of its capital stock, and the names of the directors and stockholders, with the amount of shares held by each, shall be signed by a majority of said directors, and filed in the office of the secretary of state within ninety days after depositing the deed for record; and the persons therein named shall be deemed the company to manage and control the affairs of such railroad, its charter and franchises, with all the powers, privileges, rights and immunities and property the original company had under and by virtue of the charter, and the several amendments thereto granted to said railroad company, and under the laws of the State of Arkansas at the time of said sale. *Act April 29, 1873, secs. 1-3.*

SEC. 5452. Any railroad company now chartered under existing laws, or which may hereafter become incorporated under this or other laws, shall have power and authority to purchase and hold any connecting railroad or railroads, and operate the same, or to consolidate their companies and make one company under the name of the companies or any other name. Articles of consolidation or purchase shall be signed by a majority of the directors of the respective companies, and shall be filed and recorded in the office of the secretary of state, and the amount of the capital stock of the company thus formed may be fixed at any amount not exceeding the aggregate sum authorized by the charter or articles of incorporation of the respective companies thus merging or amalgamating, and said articles of consolidation or purchase shall set forth the amount of the capital stock and names of the officers of the companies thus formed, and all conditions, agreements and stipulations in the premises; but no purchase or sale or consolidation shall be made or had, unless the same shall

(*) *Sappington v. L. R., M. R. & T. R. R. Co.*, 37—23; *L. R. & F. S. R. R. Co. v. Perry*, *Id.*, 164.

have been authorized by the vote of a majority of the stock issued by the respective companies. *Provided*, all consolidations of companies or purchasers thereof heretofore made are hereby legalized.

SEC. 5453. A majority of the directors of any railroad company now existing, or which may hereafter be organized or reorganized in this state, shall constitute a quorum; and, in addition to the rights and powers heretofore conferred on the railroad companies by their respective charters and the laws of this state, they are hereby authorized and empowered, by and with the consent or approval of the persons owning a majority of the issued stock of such railroad company, to cause to be executed and issued coupon bonds whenever deemed expedient, and to secure the payment thereof by a mortgage or deed of trust of all or any part of their charters, franchises, income, right of way, materials, road-bed, iron rails, railroad built and to be built, rolling stock, lands and other corporate property owned or afterward acquired, and they are also hereby empowered to declare and pay dividends to the stockholders in money, stock or bonds. *Act July 23, 1868, sec. 43, as amended by act April 29, 1873.*

SEC. 5454. Any railroad company in this state may relinquish its right to construct any portion of its proposed line or branches by filing a certificate of such relinquishment in the office of the secretary of state, where the same shall be recorded; such certificate shall be signed by at least a majority of the directors of such company, in pursuance of authority given by the stockholders owning a majority of the capital stock issued. In all such cases, the total amount of the capital stock of said company shall be diminished, and the stockholders authorizing the execution of the certificate aforesaid shall likewise fix the total amount of the capital stock of such company at such reduced amount as may by them be deemed expedient, and the amount so fixed shall be stated in such certificate (*). *Act April 29, 1873, sec. 5.*

SEC. 5455. The purchasers and their associates of any railroad or any corporation created by or existing under the laws of this state, whether such sale be under the decree or order of any court of competent jurisdiction or under the provisions of any mortgage or deed of trust duly executed, shall, upon the confirmation of such sale or the execution of the deed or deeds purporting to convey the property as sold, become a new body politic or corporate in fact and in law, by the name of the aforesaid corporation, or such other name as they may thereafter adopt, and shall be deemed and considered the stockholders of the capital stock of such body politic and corporate, and shall become entitled to and vested with all the corporate rights, liberties, privileges, immunities, powers and franchises of and concerning the said railroad so sold, not in conflict with the provisions of the constitution of this state, as fully as the same were held, exercised and enjoyed by such corporation before such sale.

SEC. 5456. It shall and may be lawful for the said new body politic and

(*) This act was never published. It appears that it was signed by the governor at about eleven o'clock on the night of the last day that he was authorized to sign it by the constitution, and was delivered to a deputy secretary of state sometime before midnight of the same day, at his residence, he saying that he would consider it as filed, the office of the secretary of state being then closed for the night. The next morning the secretary of state refused to mark the paper as filed. The facts being shown to Attorney-General Hughes, he gave it as his opinion that the act had duly passed. The evidence relating to this statute may be found in a transcript in the supreme court in the case of *The State v. The Memphis & Little Rock Railroad Company*, decided on the 4th day of March, 1882, though the court had no occasion in that case to pass on the question as to its validity.

corporate, at any time within one year after such sale and conveyance, to organize themselves as a corporation under such name as they may vote to adopt, by electing a board of directors of not less than five nor more than thirteen persons, and by the election or appointment of a president and such other officers as may be authorized or required by law; and such board of directors are authorized to fix the capital stock of such new corporation at an amount not exceeding the estimated cost of said railroad and equipments when completed, together with such lands as said corporation may acquire, and to issue certificates of the capital stock of such new corporation and to distribute the same; also, whenever deemed expedient, to issue bonds, and to secure the payment thereof by mortgage or deed of trust of the property, lands, income and franchises of said company.

SEC. 5457. It shall be the duty of such new corporation, within six months after its said organization, to make a certificate thereof under the common seal, attested by the signature of its president, specifying the date of such organization and the name of its president and directors, and cause said certificate to be filed in the office of the secretary of state, at Little Rock, there to remain of record. *Act Dec. 9, 1874, sec. 1.*

DAMAGES FOR RIGHT OF WAY, ETC., HOW ASSESSED (d).

SEC. 5458. Any railroad company organized under the laws of this state, after having surveyed and located the line of their road, shall, in all cases where such company fails to obtain by agreement with the owner of the fee of lands through which such line of road is or may be located the right of way over the same, apply to the circuit court of the county in which such land is situated, by petition, to have the damages for such right of way assessed, giving the owner of such land at least ten days' notice in writing of the time and place where such petition will be heard. *Provided*, that if the owner or owners of such land be non-resident of the state, infants or persons of unsound mind, such notice shall be given by the publication in any newspaper in said county which is authorized by law to publish legal notices, which notice shall be published for the same length of time as is or may be required in other civil causes. If there be no such newspaper published in the county, then said publication shall be made in some such newspaper designated by the circuit clerk (*), and one written or printed notice thereof posted on the door of the court-house of such county. *Act April 28, 1873, sec. 3.*

SEC. 5459. In all cases of infants or persons of unsound mind, when no legal representative or guardian appears in their behalf at the hearing, it shall be the duty of the court to appoint a guardian *ad litem*, who shall represent their interest for all purposes. *Ib., sec. 4.*

(d) No property nor right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner in money, or first secured to him by a deposit of money, which compensation, irrespective of any benefit from any improvement proposed by such corporation, shall be ascertained by a jury of twelve men, in a court of competent jurisdiction, as shall be prescribed by law. *Art. XII, sec. 9, Const.*

See *L. R. & F. S. R. R. v. McGehee*, 41—202. The grant of the right of way to a railroad company is no license to overflow the grantor's lands by the unskillful construction of a levee on the right of way. *St. L., I. M. & S. Railway Co. v. Morris*, 35—622.

(*) But see SEC. 4338.

SEC. 5460. Such petition shall, nearly as may be, describe the lands over which said road is located, and for which damages are asked to be assessed, whether improved or unimproved, and be sworn to. *Ib.*, sec. 5.

SEC. 5461. It shall be the duty of the court to impanel a jury of twelve men, as in other civil cases, to ascertain the amount of compensation which such company shall pay, and the matter shall proceed and be determined as other civil causes. *Ib.*

SEC. 5462. The amount of damages to be paid the owner of such lands for the right of way for the use of such company shall be determined and assessed irrespective of any benefit such owner may receive from any improvement proposed by such company (†). *Ib.*

SEC. 5463. In all cases where damages for the right of way for the use of any railroad company have been assessed in the manner hereinbefore provided, it shall be the duty of such railroad company to deposit with the court or pay to the owners the amount so assessed, and pay such costs as may, in the discretion of the court, be adjudged against it, within thirty days after such assessment; whereupon it shall and may be lawful for such railroad company to enter upon, use and have the right of way over such lands forever. *Ib.*, sec. 6.

SEC. 5464. Where the determination of questions in controversy in such proceedings is likely to retard the progress of work on or the business of such railroad company, the court, or judge in vacation, shall designate an amount of money to be deposited by such company, subject to the order of the court, and for the purpose of making such compensation when the amount thereof shall have been assessed as aforesaid, and said judge shall designate the place of such deposit. *Ib.*, sec. 7.

SEC. 5465. Whenever such deposit shall have been made in compliance with the order of the court or judge, it shall be lawful for such company to enter upon such land and proceed with their work through and over the lands in controversy prior to the assessment and payment of damages for the use and right to be determined as aforesaid. *Ib.*

SEC. 5466. In all cases where such company shall not pay or deposit the amount of damages assessed as aforesaid within thirty days after such assessment, they shall forfeit all rights in the premises. *Ib.*

SEC. 5467. The words "right of way," as used in this act, shall be construed to mean and include all grounds necessary for side-tracks, turn-outs, depots, work-shops, water stations and other necessary buildings. *Ib.*, sec. 8.

RIGHT OF WAY THROUGH STREETS, ETC. *

SEC. 5468. Any right of way heretofore granted by the city council of any city of the first or second class, or the town council of any incorporated town, to any railroad company through the streets of such city or town, with the right to establish and maintain depots and other improvements and facilities necessary thereto, shall be valid and binding.

SEC. 5469. The city council of any city of the first or second class, and the town council of any incorporated town, shall hereafter have power to grant

(†) See *St. L., A. & T. R. R. v. Anderson*, 39—167; *L. R., Miss. R. & Texas Railway Co. v. Allen*, 41—431; *St. J. & S. F. Railway v. Smith*, 42—265; *T. & St. L. Railway Co. v. Cella*, *Ib.*, 528; *T. & St. L. Railway Co. v. Eddy*, *Ib.*, 527.

to any railroad company the right of way through the streets of such city or town, with the right to establish and maintain depots and other necessary improvements in connection therewith.

SEC. 5470. If any property is injured thereby, the railroad company shall be liable for such damage, and the same shall be assessed in the manner provided by law for assessing damages for the appropriation of the right of way through lands.

SEC. 5471. It shall require the written consent of two-thirds of the property in value on said street or streets; and to arrive at said value the last assessment of said real estate, on said street or streets, shall determine the value of each separate lot or parcel of land thereon. *Act March 1, 1883.*

RIGHTS, POWERS AND DUTIES OF.

SEC. 5472. Every railroad corporation organized under this act shall make an annual report to the secretary of state (*) of the operations of the year ending on the first day of January in each year after the completion of such road, during the existence of such corporation, which report shall be verified by the oath of the treasurer and the acting superintendent of operations, and filed in his office by the twentieth day of January in each year after the completion of such road, and shall state:

First. The capital stock of such company.

Second. The amount expended for the purchase of lands, for the construction of the road, for buildings and for engines and cars, respectively.

Third. The amount and nature of its indebtedness, and the amount due the corporation.

Fourth. The amount received for the transportation of property, of passengers, of the mails and from other sources.

Fifth. The amount of freight, specifying the quantity in tons, of the product of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise and other articles.

Sixth. The amount paid for repairs, engines, cars, building and salaries.

Seventh. The number and amount of dividends, and when declared and paid.

Eighth. The number of engine-houses and shops, of engines and cars, and their character.

Ninth. The number of men employed and their occupation.

Tenth. The number of persons injured in life or limb, and the cause of such injury.

Eleventh. Whether any accidents have arisen from carelessness or negligence of any person in the employ of the corporation, and whether such person is retained in the service of the corporation. *Act July 23, 1868, sec. 28.*

SEC. 5473. The legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rates of toll, fare, freights, or other profits upon such road; but the same shall not, without the consent of

(*) The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts of all their acts and doings, which reports shall include such matters relating to railroads as may be prescribed by law, and the general assembly shall pass laws enforcing by suitable penalties the provisions of this section. *Art. XVII, sec. 13, Const.*

the corporation, be so reduced as to produce with said profits less than fifteen per cent. per annum on the capital actually paid in; nor unless, on an examination of the amounts received and expended, to be made by the secretary of state, he shall ascertain that the net income divided by the company from all sources for the year then last past shall have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in. *Ib.*, sec. 29.

SEC. 5474. If any passenger shall refuse to pay his fare or toll, it shall be lawful for the conductor of the train and the servants of the corporation to put him out of the cars at any usual stopping place the conductor shall select. *Ib.*, sec. 30.

SEC. 5475. Every such corporation shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and the junctions of other railroads, and at sidings and stopping places established for receiving and discharging way-passengers and freights, and shall take, transport and discharge such passengers and property at, from and to such places on the due payment of tolls, freight or fare legally authorized therefor. *Ib.*, sec. 31.

SEC. 5476. In case of the refusal of such corporation, or their agents, to take and transport any passenger or property, or to deliver the same, or either of them, at the regular or appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with the costs of suit. *Ib.*, sec. 32.

SEC. 5477. In forming a passenger train no baggage, freight, merchandise or lumber cars shall be placed in rear of passenger cars, and if they, or any of them, shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly. *Ib.*, sec. 33.

SEC. 5478. A bell of at least thirty pounds weight, or a steam-whistle, shall be placed on each locomotive or engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of two hundred dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer and the other half to the county; and the corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect. *Ib.*, sec. 34.

SEC. 5479. Every railroad corporation in this state shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street where the same is crossed by the railroad on the same level. Said boards shall be elevated, so as not to obstruct travel, and to be easily seen by travelers; and on each side of said boards shall be painted, in capital letters of at least the size of nine inches each, the words, "Railroad crossing—look out for the cars while the bell rings or the whistle sounds;" but

this section shall not apply to streets in cities or villages, unless the corporation be required to put up such boards by the officer having charge of such streets. *Ib.*, sec. 35.

SEC. 5480. If any person shall, while in charge of a locomotive-engine running upon any railroad in this state, or while acting as the conductor of any car or cars on any railroad in this state, be intoxicated, he shall be deemed guilty of a misdemeanor and punished accordingly. *Ib.*, sec. 36.

SEC. 5481. If any person shall willfully do, or cause to be done, any act whatever whereby any building, construction or work of any railroad corporation in this state, or any engine, machine or structures, or any matter or thing appertaining to the same, shall be stopped, obstructed, injured, impaired, weakened or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation so injured, etc., treble the amount of damages sustained by means of such offense. *Ib.*, sec. 37.

SEC. 5482. All penalties imposed by this act may be sued for by the prosecuting attorney, and in the name of the people of the State of Arkansas, in any court of this state having competent jurisdiction. *Ib.*, sec. 38.

SEC. 5483. Every railroad corporation organized under this act shall, within a reasonable time after the road shall be located, cause to be made:

First. A map and profile thereof, and of the lands taken or obtained for the use thereof, and file the same in the office of the secretary of state, and also line maps of the parts thereof located in different counties, and file the same in the office for recording deeds in the county in which said parts of the said road shall lie, there to remain as of record forever.

Second. A certificate, specifying the line upon which it is proposed to construct the railroad and the grades and curves. *Ib.*, sec. 39.

SEC. 5484. If any such corporation organized under this act shall not, within five years after its incorporation, begin the construction of its road, and expend thereon ten per cent. on the amount of its capital, and finish the road and put it in full operation in ten years thereafter, its act of incorporation shall become void. *Ib.*, sec. 40.

SEC. 5485. Any person or corporation, public or private, who may wish to donate, grant or devise any lands or other property for the purpose of aiding in the construction, building or running of any railroad within this state, under the provisions of this act, may, by deed or otherwise, convey the same to the state for that purpose, which shall be held by the state for that purpose solely.

SEC. 5486. The donor, grantor or deviser may, at his or her discretion, designate the railroad company or association to which said lands or other property shall be appropriated, and, if such road or corporation is not completed within the time fixed by law, the land or property so donated shall revert back to said donor, grantor or deviser. *Ib.*, sec. 41.

SEC. 5487. It shall not be necessary for any railroad having branches from the main trunk to complete said branches in order to comply with the provisions of this act. *Ib.*, sec. 42.

INCREASE OF CAPITAL STOCK—POWER TO MORTGAGE.

SEC. 5488. Whenever any railroad company heretofore or hereafter incorporated in this state shall, in the opinion of the directors thereof, require an increased amount of capital stock, they shall, if authorized by the holders of a majority of the stock, be and they are hereby authorized to increase their capital stock to any amount not exceeding the estimated cost of their road, and shall have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, at a rate of interest not exceeding seven per cent. per annum, and may execute its bonds therefor, in sums of five hundred dollars or one thousand dollars, and, to secure the payment thereof, may pledge the property, both real and personal, and income of such company, and, to secure the payment thereof, may execute a deed of mortgage or other instrument of writing; and such company are hereby authorized to sell, negotiate, pledge or mortgage such bonds for the benefit of such company, and at such terms and in such places, either within or without this state, and at such rates and for such prices as, in the opinion of said directors, will best advance the interests of such company; and if such bonds are thus sold *bona fide* at a discount, such sale shall be as valid, in every respect, and such securities as binding, for the respective amounts thereof, as if they were sold at their par value. *Act Jan. 22, 1855, sec. 7.*

LANDS DONATED IN AID OF.

SEC. 5489. Whenever any person having title to or being the owner of any lands which have been or may be stricken off to the state, or forfeited for non-payment of taxes, shall donate or subscribe the same in aid of the construction of any railroad, and the same shall be reported to the auditor of state on or before the first day of January in each year, he shall grant his certificate, as in case of redemption, and thereupon all taxes and claim of the state on account of non-payment of taxes on each tract of land so subscribed or donated shall be remitted and discharged.

SEC. 5490. A lien shall exist in favor of the state for the taxes hereby remitted, which may be enforced and said taxes collected according to law if such railroad shall not be completed through the county in which or nearest to which such lands are selected within five years from the date of such subscription or donation. *Act April 8, 1869, secs. 1, 2.*

SEC. 5491. When any railroad company, by the performance of the conditions imposed in any act granting lands to such company, has become entitled to such lands, or any part thereof, such company shall apply therefor and take all necessary steps to perfect its title to such lands, and shall apply for and accept a conveyance thereof from the state within six months from the passage of this act, and any such company which shall fail to do so, within the time aforesaid, shall forfeit all lands not applied for and conveyed within that time.

SEC. 5492. Any railroad company which shall hereafter become entitled to a conveyance of any lands from the state shall apply therefor and accept a conveyance from the state within six months after completion of the act by which it became entitled to such conveyance, and any company which shall fail to do

so, within the time aforesaid, shall forfeit all lands for which it fails to apply within such time.

SEC. 5493. It shall be the duty of the state land commissioner, immediately upon the execution of any conveyance conveying lands to any railroad company, to make a list of the lands conveyed and send the same to the assessor of the county in which such lands are situate; and such assessor shall, at the next assessment, assess such lands for taxation as the property of such railroad company in the same manner that other lands are assessed.

SEC. 5494. All lands forfeited under the provisions of this act shall revert to and belong to the State of Arkansas, and shall be sold as other lands.

SEC. 5495. The commissioner of state lands is charged with the duty of making inquiry and of reporting to the governor all failures of any railroad company to make application and accept conveyance within the time hereinbefore specified.

SEC. 5496. He shall report all failures, with a list of the lands forfeited by such non-application; upon receipt of such report the governor shall make proclamation that such lands have been forfeited and are subject to sale by the state. *Act Feb. 20, 1883.*

. FARE AND FREIGHT ON SHORT LINES.

SEC. 5497. Railroad companies having roads not exceeding fifty miles in length may charge for the carriage of each passenger, and his or her ordinary luggage, not exceeding ten cents per mile (*) for the distance such passenger is carried, and such companies, for loading, carrying and unloading freights may charge not exceeding forty cents per hundred pounds for any distance.

SEC. 5498. The rates charged by any such company may be reduced by the board of railroad commissioners of this state whenever it appears that the net annual profits of such company exceed ten per centum of the amount of its capital actually invested. But such rates shall not be reduced so as to reduce the net annual profits of such company below ten per centum of the amount of its capital actually invested.

SEC. 5499. If any such railroad company shall charge more than the rates named in this act, the person paying the same may recover from such railroad company five times the sum so charged, together with the costs of action, by action before a justice of the peace, or other court having jurisdiction. Service of summons in such action may be made by delivering a copy of the summons to any agent of such company (†). *Act March 15, 1881.*

WHEN COMPELLED TO STOP TRAIN IN CORPORATE LIMITS OF TOWN.

SEC. 5500. When not less than fifty citizens of any incorporated town in this state, situated on the line of any railroad run or operated within this state, shall make application in writing to the president of said railroad company, or to the board of directors thereof, through its secretary, or to any receiver, mort-

(*) See SEC. 5447, *ninth paragraph.*

(†) The journal of the senate shows that the act of April 29, 1873, to regulate freights, fares, etc., embraced in sections 4994-4998 of Gantt's Digest, was never passed by that body, and it is therefore omitted. See *Senate Journal*, pp. 597, 601, 728, 760. The act of March 15, 1881, being thus left as the only statute regulating freights, appears to discriminate against the class of roads it was obviously intended to favor.

gagee, trustee, contractor or other officer running and operating the same and having control thereof, it shall be the duty of such railroad company to stop all trains, freight or passenger, at some point within the corporate limits of such town most convenient for the reception and handling and discharge of freight, and the reception and discharge of passengers, and the reception and delivery of the mails, and most convenient to accommodate the business of such town, and shall furnish, provide and maintain for such town and the business thereof every facility and convenience furnished or provided for other towns of the same, or approximating the same, population situated on the line of said railroad; and there shall be no unjust discrimination on the part of such companies, either in respect to such facilities and conveniences or in respect to the freight and passenger charges of tariff upon said railroads, but the same shall be equal and uniform, and as to such towns the same or any description of way passengers and freight shall not be subjected to higher rates of charges than the lowest rates charged by the same line, at the same time, for the same service over any part of said line.

SEC. 5501. Before any town may or can insist upon and compel the stoppage of trains as in this act provided, the corporate authorities of such town shall provide and make tender to such railroad companies sufficient means to defray the reasonable expenses of grading a switch or side-track at such place of stopping for the use of such railroad company.

SEC. 5502. The writ of *mandamus* may issue at the suit of any citizen of such town upon the failure of any such railroad company to stop its trains as in this act provided, and to compel such company to comply with the requirements of this act.

SEC. 5503. If any railroad company within this state shall violate any of the provisions of this act, the corporate authorities of any incorporate town aggrieved, or any citizen thereof, may bring suit against such company for the reasonable damages sustained through such violation.

SEC. 5504. Any railroad company violating, or failing, or refusing to obey the requirements of this act shall be liable to a fine of one hundred dollars for each day of failure or refusal to carry out the provisions thereof, which fine shall be recoverable before any court of competent jurisdiction, and shall be paid into the state treasury for the benefit of the school fund of the state. *Act April 21, 1873.*

MAJORITY OF DIRECTORS TO BE CITIZENS OF THE STATE—OFFICES OF PRESIDENT, ETC., TO BE KEPT IN THE STATE.

SEC. 5505. A majority of the directors of each and every company organized under the laws of this state, elected after the passage of this act, shall be residents and citizens of the State of Arkansas.

SEC. 5506. The offices of the president, secretary and treasurer of every railroad company organized under the laws of this state, and doing business herein, shall be established and kept at some point within the state. The books and records of all the proceedings of any such company shall be kept at such office or offices, and open at all reasonable hours for the inspection of any stockholder.

SEC. 5507. A neglect to comply with the provisions of the preceding section shall be a cause of forfeiture of the charter of any railroad company; and it is hereby made the duty of the attorney-general to bring suit to forfeit the charter of any railroad company which shall, for thirty days after the passage of this act, refuse or neglect to comply with the provisions of the preceding section. *Act April 28, 1873, secs. 9, 10.*

HOW SHARES EXCHANGED, HOW VOTED, ETC.

SEC. 5508. Any railroad company organized under and by virtue of the laws of this state, the capital stock of which is limited in its par value to twenty-five dollars per share, may issue its shares in denominations of one hundred dollars, and exchange shares of that denomination for its present shares, giving one share of the par value of one hundred dollars in exchange for four shares of the par value of twenty-five dollars.

SEC. 5509. The shares of any such railroad company may be voted by the owner thereof, in person or by proxy, at any meeting of the stockholders, convened in accordance with the organic law of such company. *Provided*, that such stock has been owned by the principal in his own right, on the books of the company, for thirty days prior to such meeting of the stockholders. *Act April 28, 1873, secs. 1, 2.*

SEC. 5510. It shall be lawful for any railroad or other incorporated company, organized under the laws of this state, to fix the par value of the shares of its capital stock at one hundred dollars per share. *Provided*, that stock now in existence of less amount than one hundred dollars shall continue to have *pro rata* representation. *And, provided, further*, that the number of shares of stock required to be owned by directors, as one of the qualifications for that office, shall be reduced in the same proportion as the par value of the shares is increased. *And, provided, further*, that this act shall not be so construed as to authorize the increase of the amount of capital stock of any company (c). *Act April 25, 1873.*

CONSOLIDATION, AID TO OTHER ROADS, POWERS OF SALE, ETC.

SEC. 5511. Any two or more railroad companies in this state, existing under either general or special laws, and owning railroads, constructed wholly or in part, which, when completed and connected, will form one continuous line of railroad, continuing and running in the same general direction, are hereby authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without this state, and form one company, owning and controlling such continuous line of road, with all the powers, rights, privileges, franchises and immunities, and subject to all the obligations and liabilities to the state, or otherwise, which belonged to or rested upon either of the companies making such consolidation, and shall be subject and liable to all the contracts theretofore entered into by either of said corporations (†).

(c) See SEC. 5488.

(†) See *N. L., I. M. & S. Railway Co. v. Berry*, 41—509; *Zimmer v. State*, 30—677.

SEC. 5512. In order to accomplish such consolidation, the companies interested may enter into a contract fixing the terms and conditions, which shall first be ratified and approved by two-thirds in interest of all the issued capital stock held in such companies or roads proposing to consolidate, at a meeting of the stockholders regularly called for the purpose, after giving sixty days' notice of said meeting, by advertisement in some daily or weekly newspaper printed and published in the City of Little Rock, Arkansas, and such other newspapers elsewhere as the board of directors of such companies may deem expedient.

SEC. 5513. A certified copy of such articles of agreement, with the corporate name to be assumed by the new company, shall be filed by the secretary of state when the consolidation shall be considered duly consummated, and a certified copy from the office of the secretary of state shall be evidence thereof.

SEC. 5514. The board of directors of the several companies may then proceed to carry out such contract according to its provisions, calling in the certificates of stock then outstanding in the several companies or roads, and issuing certificates of stock in the new consolidated company under such corporate name as may have been adopted. *Provided, however,* that the foregoing provisions of this section shall not be construed to authorize the consolidation of any railroad companies or roads, except when, by such consolidation, a continuous line of road is secured, running in the same continuous and general direction; *and, provided,* that nothing herein contained shall be so construed as to authorize or permit the sale, lease or consolidation of parallel or competing lines of railroad to and with each other.

SEC. 5515. Before any railroad companies shall consolidate their roads under the provisions of this act, they shall each file with the secretary of state a resolution accepting the provisions thereof, to be signed by their respective presidents and attested by their respective secretaries, under the seal of their respective companies, which resolution shall have been passed by a two-thirds vote of the issued capital stock of each at a meeting of the stockholders thereof, called for the purpose of considering the same, in the manner herein-before mentioned and set forth.

SEC. 5516. Any railroad company heretofore incorporated, or hereafter organized in pursuance of law, may at any time, by means of subscription to the capital stock of any other railroad company, or otherwise, aid such company in the construction of its railroad, within or without the state, for the purpose of forming a connection of the last mentioned road with the road owned by the company furnishing such aid, or any such railway company which may have built its road to the boundary line of the state may extend into the adjoining state or the Indian Territory; and for that purpose may build or buy or lease a railroad in such adjoining state, or the Indian Territory, and operate the same, and may own such real estate and other property in such adjoining state or the Indian Territory as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any state, or of the United States, may lease or purchase all, or any part of a railroad, with all its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this state, and constructed, owned or leased by any other company, if the lines of the road or roads of said companies are continuous, or connected at any point either within or

without this state, upon such terms as may be agreed upon between said companies, respectively; or any railroad company duly incorporated and existing under the laws of any adjoining state, or of the United States, may extend, construct, maintain and operate its railroad into and through this state, and for that purpose shall possess and exercise all the rights, powers and privileges conferred by the general laws of this state upon railroad corporations organized thereunder not in contravention or inconsistent with section 11 of article XII of the constitution of this state, and shall be subject to all duties, liabilities and provisions of the constitution and laws of this state concerning railroad corporations as fully as if incorporated in this state; but nothing herein contained shall authorize the construction of a line of railroad by any foreign railroad corporation which would in any manner conflict with the rights of any railroad company created by or under the laws of this state acquired under the general railroad act, or section 5446, or any railroad company duly incorporated and existing under the laws of an adjoining state or of the United States; and any railroad company organized under the laws of this state, whose roads shall connect at the boundary line of this state, are hereby authorized to consolidate and form one company, owning and controlling such consolidated line of road, with all the powers, rights, privileges, immunities and franchises, and subject to all the obligations and liabilities to the state or otherwise which belonged to or rested upon either of the companies making such consolidation.

SEC. 5517. In order to accomplish such consolidation, the companies interested may enter into a contract fixing the terms and conditions thereof.

SEC. 5518. A certified copy of such articles of agreement, with the corporate name assumed by the new company, shall be filed with the secretary of state, when the consolidation shall be considered duly consummated; and a certified copy thereof, from the office of the secretary of state, shall be evidence of such consolidation.

SEC. 5519. The boards of directors of such consolidated companies may then proceed to carry out such contract according to its provisions, calling in and canceling all stock issued by the consolidated companies; and the board of directors of the new company shall issue stock in lieu of it in the new company in accordance with the terms of consolidation.

SEC. 5520. No such aid shall be furnished, nor any purchase, lease, subletting, consolidation or arrangements perfected until a meeting of the stockholders of all said companies, party or parties to such agreement whereby a railroad in this state may be aided, purchased, leased, sublet, consolidated or affected by such arrangement, shall have been called by the directors thereof at such time and place, and in such manner, as they shall designate, after giving sixty days' notice of said meeting, by advertisement in some daily or weekly newspaper printed and published in the City of Little Rock, Arkansas, and such other newspapers elsewhere as the board of directors shall deem expedient, and the holders of two-thirds of the issued capital stock of such companies, in person or by proxy, shall have assented thereto, and a certificate thereof, signed by the president and secretary of said company or companies, shall have been filed in the office of the secretary of state.

SEC. 5521. If a railroad company of another state shall lease a railroad, the

whole or a part of which is in this state, or make arrangements for operating the same, as provided in this act, or shall extend the railroad into this state or through this state, such part of said railroad as is within this state shall be subject to taxation, and shall be subject to all regulations and provisions of law governing railroads in this state.

SEC. 5522. A corporation in this state, leasing its road to a corporation of another state, shall remain liable as if it operated the road itself, and a corporation of another state, being the lessee of a railroad in this state, shall likewise be held liable for the violation of any of the laws of the state, and may sue or be sued in all cases, and for the same causes and in the same manner as a corporation of this state might sue or be sued if operating its own road; but a satisfaction of any claim or judgment by either of said corporations shall discharge the other.

SEC. 5523. A corporation of another state, being the lessee as aforesaid, or extending its railroad as aforesaid into or through this state, shall establish and maintain an office or offices in this state at some point or points on the line of the road so leased or constructed and operated, where transfer of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditor of such corporation, in which shall be recorded the amount of the capital stock subscribed or paid in, and the amounts owned by them respectively, the transfer of said stock and the names and places of residence of the officers.

SEC. 5524. Service of process on the officer or agent of such railroad corporation, in the manner provided by law for the service of process on railroad corporations organized under the laws of the state, shall be deemed to be a sufficient service on such corporation, its officers, agents and attorneys, as though personal service had been made on such corporation, its officers, agents and attorneys.

SEC. 5525. No such corporation shall do any business in this state except while it maintains therein one or more known places of business and authorized agent or agents, upon which process may be served.

SEC. 5526. Every railroad corporation incorporated under the laws of this state whose road is wholly or in part constructed and operated is hereby authorized to sell, lease or otherwise dispose of the whole or any part of its road, ways and rights of way, with the franchises thereto belonging, and its other property, to any connecting railroad company, or to any railroad corporation now or hereafter organized under the laws of this or any other state, upon such terms and conditions as may be agreed upon by the board of directors of said corporations, and ratified by a two-thirds vote of the issued capital stock thereof, and to receive the bonds or stock of the purchasing corporation in whole or in part payment of such purchase.

SEC. 5527. Corporations may be formed for the purpose of purchasing or leasing the whole or any part of any railroad, and such purpose or object shall be stated in articles of association, which shall be executed and filed in the office of the secretary of state, the same to be, as near as may be, in accordance with section 5420.

SEC. 5528. All shares of stock issued in payment of such purchase shall be deemed to be full paid shares, and the number and amount of shares so to be

issued shall be stated in the aforesaid articles of association; and said articles shall be otherwise altered, if necessary, so as to conform to the facts.

SEC. 5529. For the purpose of carrying out and executing any or all of the powers granted in the preceding sections, bonds or other evidences of debt may be issued by any leasing, purchasing or consolidating corporation or corporations, not inconsistent with the constitution of the state, and, to secure the payment of such bonds or other evidences of debt, mortgages or deeds of trust may be executed by such corporation on any or all of its property, real, personal or mixed, and upon its road-bed, rights of way, cars, locomotives and other rolling-stock and equipments, its machinery, tools, implements, fuel, material and income, either within or without the state, and all other things or property then held or thereafter to be acquired for the constructing, operating or repairing of said railroad, or for the repairing or replacing of any other equipments or appurtenances as a part and parcel of said railroad, and as constituting with said railroad one property and continuous line, and to include in such mortgages or deeds of trust the franchise of acting as and being a corporation, and all other franchises, rights and privileges herein granted by this act, or in any wise appertaining to such corporations as aforesaid.

SEC. 5530. Any railroad company incorporated by or under the laws of any other state, and having a line of railroad built, or partly built, to or near any boundary of this state, and desiring to continue its line of railroad into or through this state, or any branch thereof, may, for the purpose of acquiring the right to build its line of railroad, lease or purchase the property, rights, privileges, lands, tenements, immunities and franchises of any railroad company organized under the laws of this state, which said lease or purchase shall carry with it the right of eminent domain held and acquired by said company at the time of lease or sale, and thereafter hold, use, maintain, build, construct, own and operate the said railroad so leased or purchased as fully and to the same extent as the company organized under the laws of this state might or could have done; and the rights and powers of such company, and its corporate name, may be held and used by such foreign railroad company as will best subserve its purpose and the building of said line of railroad.

SEC. 5531. Before any such lease or sale shall be made by any company organized under the laws of this state, two-thirds in amount of the capital stock issued shall, at a meeting of the stockholders thereof—of which sixty days' notice shall be given in some newspaper published at the City of Little Rock, and in such other papers published elsewhere as the president and directors of such company may direct—assent thereto; and any railroad company organized under the laws of any state, and having a line of railroad built, or partly built, to any boundary of this state, and desiring to continue its line of road, or any branch thereof, into or through this state, is hereby authorized and empowered so to do when it shall have acquired, by lease or purchase, in the manner provided in section 5530 and in this section, the corporate rights, privileges and franchises of any railroad corporation formed under the laws of this state; and such railroad company, upon filing a certified copy of its articles of incorporation, or the special act incorporating the same, shall have, possess and enjoy all the rights, powers, privileges, franchises and immunities belonging to railroad corporations formed under the general laws of this state which are not in con-

flict with the constitution or laws of this state; but nothing herein contained shall interfere with or abridge the right of any railroad corporation acquired under section 5446.

SEC. 5532. Any railroad company formed under the laws of another state may assume any debt or liability of any railroad company whose property it may have purchased or leased, and make such adjustment or exchange of bonds, stock, or other evidences of debt, with any bondholder, stockholder or creditor of such company leasing or selling its road as to said foreign company may seem expedient, and as may be acceptable to such stockholders, bondholders or creditors, and may, for such purpose, issue stock, bonds or other evidences of debt, for the purposes aforesaid, not inconsistent with the constitution and laws of this state, upon the property so acquired by purchase, lease or otherwise, and, in addition thereto, secure the payments of such bonds, or other evidences of debt, by mortgages or deeds of trust of its railroad or any other of its property, real, personal or mixed, and to include therein, with its entire line of road, road-bed and right of way, all its cars and other rolling stock and equipments, and its machinery, tools, implements, fuel, material and income, either within or without this state, and all other things then held, or thereafter to be required, for the constructing, operating or repairing of said railroad, or for repairing or replacing any of its equipments or appurtenances, as a part and parcel of said railroad, and as constituting with said railroad one property and continuous line, and to include in such mortgages or deeds of trust the franchise of acting as and being a corporation, and all other franchises, rights and privileges by this act granted, or in anywise appertaining to said foreign company, or the company whose property was leased or purchased. In all other matters said foreign railroad company shall be subject to all the provisions of all acts in relation to railroads, the liabilities and forfeitures thereby imposed, and may sue and be sued in the same manner as other railroad corporations, and subject to the same service of process, and shall keep an office or offices in said state, as is required by section 11 of article XII of the constitution of this state, and an agent or agents, upon whom process may be served with the like force and effect as is provided for the service of process in section 5524. *Act March 16, 1881.*

MANNER IN WHICH ROADS SHALL CROSS, INTERSECT, ETC. (*).

SEC. 5533. Every railroad corporation created and organized under the laws of this state, or created and organized under the laws of any other state or the United States, and operating a railroad in this state, shall have the power to cross, intersect, join or unite its railroad with any other railroad now constructed, or that may hereafter be constructed, at any point on its route and upon the grounds and right of way of such other railroad company, with the necessary turn-outs, sidings and switches and other conveniences in furtherance of the object of its construction. And every railroad company whose railroad is or shall be crossed, joined or intersected by any new railroad shall unite with the owners and corporation of such new railroad in forming such crossing, intersection and connection, and shall grant to such railroads so cross-

(*) Every railroad company shall have the right with its road to intersect, connect with or cross any other road, and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination. *Art. XVII, sec. 1, Const.*

ing, intersecting or uniting all the necessary facilities for that purpose as aforesaid.

SEC. 5534. If the two corporations can not agree upon the amount of compensation to be made for the purposes set forth in the foregoing section, or the points or manner of such crossing, junctions or intersections, the same shall be ascertained and determined by a court of competent jurisdiction in the same manner as provided for the ascertainment of damages for right of way for railroads.

SEC. 5535. Every railroad company operating a railroad in this state shall cause all freight and passenger trains running on their roads to stop at all points on their roads where another railroad crosses, joins, unites or intersects and take and receive on their trains all passengers, freights and mail which such railroad so crossing, joining or intersecting has for shipment at such point, and shall carry the same, and shall also discharge all passengers, freights and mail consigned to said point of crossing, intersection or junction of such railroad, and which is to be transported, carried and conveyed on said railroad, and no railroad company shall in any wise discriminate against passengers or freight transported or conveyed by any intersecting railroad company.

SEC. 5536. Any railroad company violating any of the provisions of the preceding sections shall forfeit and pay to the company injured thereby double the amount of damages which such injured company may have sustained, to be recovered in any court of competent jurisdiction. *Act March 20, 1883.*

DAMAGES TO PERSONS AND PROPERTY (*).

SEC. 5537. All railroads which are now or may be hereafter built and operated in whole or in part in this state shall be responsible for all damages to persons and property done or caused by the running of trains in this state.

SEC. 5538. Whenever any stock, such as horses, cows, hogs, sheep, etc., are killed, wounded or injured by railroad trains running in this state, the conductor or engineer on the train doing the damage shall cause the station-master or overseer at the nearest station-house to the killing or wounding to post, within one week thereafter, and to so keep posted for twenty days thereafter, a true and correct description of such stock as may have been so killed or wounded, at the nearest station-house and the nearest depot-house, giving a true and correct description of the color, marks, brands, and other natural description that may assist in identifying such stock, and the time when, and place where, killed or wounded, and, on failure to so advertise any stock so killed or wounded,

(*) All railroads, which are now, or may be hereafter, built and operated, either in whole or in part, in this state, shall be responsible for all damages to persons and property, under such regulations as may be prescribed by the general assembly. *Art. XVII, sec. 12, Const.*

For liability for injuries received by employees, see *L. R. & F. S. R'y. v. Townsend*, 41—382; *St. L. & S. F. R. R. v. Marker*, *Ib.*, 542.

For injuries to passengers, see *George v. St. L., I. M. & S. R'y. Co.*, 34—613; *St. L., I. M. & S. R'y. Co. v. Cantrell*, 37—519; *L. R. & Ft. S. R'y. Co. v. Mills*, 40—238.

For injuring or killing persons by the running of trains, see *St. L., I. M. & S. R'y. Co. v. Freeman*, 36—41; *L. R. & Ft. S. R'y. Co. v. Barker*, 33—350, 39—491.

For injuring or killing stock, see *L. R. & Ft. S. R'y. Co. v. Payne*, 33—816; *L. R. & Ft. S. R'y. Co. v. Trotter*, 37—593; *L. R. & Ft. S. R'y. Co. v. Finley*, *Ib.*, 562; *L. R. & Ft. S. R'y. Co. v. Henson*, 39—413; *L. R. & Ft. S. R'y. Co. v. Jones*, 41—157; *L. R. & Ft. S. R'y. Co. v. Turner*, *Ib.*, 161; *M. & L. R. R. v. Jones*, 36—87; *St. L., I. M. & S. R'y. Co. v. Vincent*, *Ib.*, 451; *L. R. & Ft. S. R'y. Co. v. Holland*, 40—336.

the owner shall recover double damages for all stock so killed and not advertised (†).

SEC. 5539. When any person shall be wounded by a railroad train running in this state, he may sue for damages in his own name; or, if he be a minor, his father, if living, may sue; and if the father be dead, then the mother may sue; and if both father and mother be dead, then the guardian of such minor may sue for and recover such damages as the court or jury trying the case may assess (‡).

SEC. 5540. Any person who owns stock as aforesaid in his own right, or who has a special ownership therein, having any such horses, mules, cattle or other stock killed or wounded by any railroad trains running in this state, may sue the company running such trains for the damages sustained by such killing or wounding, in any court having jurisdiction of the amount of damages in the county where the killing or wounding occurred, at any time within twelve months after the killing or wounding occurred, and recover such damages as the court or jury trying the case may assess. *Act Feb. 3, 1875, secs. 1-4.*

SEC. 5541. When any such stock are killed or wounded by any railroad train, the company or the party damaged may propose to the other to arbitrate the amount of damages, and, on agreement to do so, each party shall choose one referee from the vicinity where the damages occurred, these two, in case of disagreement, to select a third referee, who shall be sworn to truly assess the damages, and, any two of whom agreeing, shall reduce their finding to writing, sign it in duplicate, and deliver one copy to the railroad company or agent, and the other to the party damaged. On paying such award of damages by the railroad within ten days, they shall be forever released from all further damages; but, on failure to do so, they shall pay to the party damaged a reasonable sum, to be fixed by the court, as attorney's fee. *Provided*, that in case the party injured refuses to abide by said award, and fails to recover a greater amount than was awarded, he shall pay such railroad a reasonable attorney's fee, to be fixed by the court. *Ib., sec. 5, as amended by act Feb. 22, 1883.*

SEC. 5542. Service by process of summons, issued by any court under the provisions of this act, shall be by serving a copy of the summons on any agent of the railroad company sued, at any depot-house in the county where suit is brought.

SEC. 5543. The property of any railroad company may be levied on and sold, under an execution issued on a judgment for damages under this act, in the same manner and under the same rules governing other judgments at law.

SEC. 5544. The killing of stock on any railroad track shall be *prima facie* evidence that it was done by the trains, and the *onus* to prove the reverse will be on the railroad company.

SEC. 5545. If any section boss or master, hand, or other person employed by any railroad company owning and operating any railroad in this state, or any other person connected with any railroad in this state, shall be caught mutilating, disfiguring, burning, hauling off or burying any dead carcass that shall be killed on any railroad in this state, without first notifying at least two

(†) See *L. R. & Ft. S. R. R. Co. v. Payne*, 33—816; *M. & L. R. R. v. Horsfall*, 36—651; *M. & L. R. Ry. Co. v. Carley*, 39—246.

(‡) As to actions when death ensues from the injury, see SECS. 5225, 5226.

citizens of the neighborhood, whose duty it shall be to take and preserve all marks, flesh or ear or otherwise, or value of such animal, brute, swine or other stock, shall be deemed guilty of a misdemeanor, and be fined in any sum not less than twenty-five dollars, nor more than five hundred dollars, for such offense. *Ib.*, secs. 6-9.

TOLL-BRIDGES—RAILROADS AUTHORIZED TO BUILD, ETC.

SEC. 5546. Any railroad company, now or hereafter incorporated under the laws of this state, which is authorized to cross a river or stream, and which has actually finished, or is prosecuting in good faith the grading of its said road, shall have the right to construct a bridge over said river or stream, adapted to highway purposes, as well as to the use of said road, with suitable approaches and ways, or said company may sell, lease or otherwise convey to any corporation, organized for that purpose under the laws of this state, the right to construct such bridge; and the company so building the same may charge and receive tolls for the use of said bridge as a highway, not exceeding, however, the following rates, to wit:

Man on foot, five cents.

Horses, cattle, mules, sheep, hogs, goats and all other live stock, per head, five cents.

Man and horse, twenty cents.

One-horse wagon or carriage, twenty-five cents.

Two-horse wagon or carriage, thirty-five cents.

Three-horse wagon or carriage, fifty cents.

Four-horse wagon or carriage, sixty cents.

Six-horse wagon or carriage, one dollar.

And at the same rates for wagons or carriages drawn by cattle or mules.

SEC. 5547. Such bridge shall be so constructed with a draw, or otherwise, as not to prevent navigation upon said river or stream, and in such manner as the judge of the county court in which said bridge is located may approve; or, if said bridge is located in more than one county, in such manner as the judges of said county courts may approve.

SEC. 5548. The same rights and powers of condemning lands and property are hereby granted to any corporation which may exercise the privileges and franchises granted by the foregoing section as are now or hereafter may be conferred upon railroad corporations, and all proceedings relating to such condemnation shall be the same as in condemning lands for railroad purposes only.

SEC. 5549. The rates of tolls established by said company, which shall in no case exceed the rates prescribed by section 5546, shall be posted up at each end of said bridge, in some conspicuous place, on a board painted with a white ground, containing said rates of tolls in black letters; and whoever shall cross said bridge without paying or tendering payment of the tolls, so as aforesaid prescribed for him or them, with intent to defraud said company out of said tolls, shall forfeit and pay to said company for each and every offense the sum of twenty-five dollars, to be recovered before any justice of the peace for the county wherein said bridge is located, or, if said bridge is located in more than one county, in either county in which any part of said bridge is located. *Act Feb. 28, 1881.*

CHAPTER CXXVI.

RECORDERS.

SECTION

5550. Office of to be kept in each county.
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5552. Bond of.
5553. Action on bond, when.
5554. Penalty for acting as such before giving bond.
5555. On failure to enter into bond, office vacant.
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5560. Entry to be made of instrument filed for record, and receipt to be given.
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SECTION

5562. When considered recorded, and form of certificate of record.
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5564. Requisites of index.
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5566. Deeds and conveyances hereafter recorded to be referred to in index.
5567. Penalty for failure or breach of duty of recorder, and how recovered.
5568. When recorder to be deemed guilty of misdemeanor.

SECTION 5550. There shall be established in each county in this state an office, to be styled the recorder's office, which shall be kept at the seat of justice.

SEC. 5551. The clerk of the circuit court shall be *ex officio* recorder for his county, and shall duly attend to the duties of such office, and shall provide and keep in his office well-bound books, in which he shall record, in a fair and legible hand, all instruments of writing authorized or required to be recorded in the manner hereinafter provided. *Rev. Stat., chap. 124, sec. 1, and art. VII, sec. 19, Const.*

SEC. 5552. Before entering on his duties as recorder he shall enter into bond to the state in the sum of two thousand dollars, with sufficient security, to be approved as required by sections 4771 and 4772, conditioned for the faithful performance of the duties enjoined on him by law as recorder, and for the delivering up the records, books, papers, writings, seals, furniture and all things belonging to the recorder's office, whole, safe and undefaced, to his successor, which bond shall be deposited in the office of the secretary of state.

SEC. 5553. If any person shall be damaged by the conduct of the recorder, such person may commence an action on his official bond.

SEC. 5554. No recorder shall enter upon or officiate in his office before he has given such security, upon the pain of forfeiting the sum of one hundred dollars, one-half to the county and the other half to him who will sue for the same.

SEC. 5555. If any clerk of the circuit court shall fail to enter into bond as recorder within fifteen days after the receipt of his commission, his office shall be considered vacant, and such vacancy filled accordingly.

SEC. 5556. The seal of the circuit court shall be the seal of the recorder, and shall be used as such in all cases in which his official seal may be required.

SEC. 5557. Each recorder shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof, and such accounts shall be audited by the county court and paid out of the county treasury.

SEC. 5558. It shall be the duty of each recorder to record in the books provided for his office all deeds, mortgages, conveyances, deeds of trust, bonds,

covenants, defeasances or other instruments of writing of or concerning any lands and tenements or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in his office.

SEC. 5559. Each recorder shall record, in books to be provided for that purpose, all marriage contracts and marriage certificates, and all commissions and official bonds required to be recorded in his office.

SEC. 5560. When any deed, mortgage, deed of trust, bond, conveyance or other instrument of writing authorized by law to be recorded shall be deposited in the recorder's office for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order, the names of the persons and date and nature thereof, the time of delivery for record, and shall give to the person delivering the same, if required, a receipt, specifying the particulars thereof.

SEC. 5561. Each recorder shall, without delay, record every deed, mortgage, conveyance, deed of trust, bond or other writing delivered to him for record, with the acknowledgment, proofs and certificates written on or attached to the same, and all other papers (a) herein referred to and thereto annexed, in the order and as of the time when the same shall have been delivered for record, by entering them, word for word and letter for letter, and noting at the foot of each record all interlineations, erasures and words visibly written on erasures, and noting at the foot of the record the day of the month and year when the instrument so recorded was delivered to him or deposited in his office for record.

SEC. 5562. Every deed, mortgage, conveyance, deed of trust, bond or other instrument of writing shall be considered as recorded from the time it was delivered for record (b), and the recorder shall certify and attach to every such deed, mortgage, conveyance, deed of trust, bond and other instrument of writing so recorded the day, month and year when he received it, and the book and page or pages in which it is recorded, and when recorded deliver the same to the party entitled thereto or his order.

SEC. 5563. Each recorder shall provide and keep in his office a well-bound book, and make and enter therein an index, in alphabetical order, to all books of record wherein deeds, mortgages or other instruments in writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded.

SEC. 5564. Such index shall contain the names of the several grantors and grantees in alphabetical order, and in case the deed be made by a sheriff, the name of the sheriff and the defendant in the execution, and if by executors or administrators, their names and the names of their testator or intestate, and if by attorney, the name of such attorney and his constituent, and if by a commissioner, the name of such commissioner and the person whose estate is conveyed.

SEC. 5565. Each recorder shall, in like manner, make, keep and preserve a full and perfect alphabetical index to all books of record in his office wherein all deeds and instruments of writing in relation to personal property, marriage contracts, certificates of marriage and all other papers are recorded; and a like

(a) For fees of recorder, see SEC. 3243.

He is not bound to file or record instruments until his fees and the tax thereon are tendered. SEC. 3244.

(b) See SEC. 4743, and note (b) thereto.

index of all the books of record wherein commissions and official bonds are recorded, the names of the officers appointed and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded.

SEC. 5566. Each recorder shall make a reference in the several indexes of all deeds and conveyances which may hereafter be recorded, so as to afford, at all times, an easy reference to such records.

SEC. 5567. If any recorder to whom any deed or other writing, proved or acknowledged according to law, shall be delivered for record shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by this act, or shall neglect or refuse to record such deed or writing within a reasonable time after receiving the same, or shall record any deed or instrument of writing before another first deposited in his office and entitled to be recorded, or shall record any deed or other writing incorrectly, or shall neglect or refuse to provide and keep in his office such indices as required by this act, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered by action, one-half to the use of the county and the other half to the use of the person who shall sue for the same, and also be liable to any person injured for all damages he may have sustained thereby, to be recovered by action on the official bond of such recorder.

SEC. 5568. If any recorder shall willfully neglect to perform any of the duties required of him by this act, or shall willfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly. *Rev. Stat., chap. 124.*

CHAPTER CXXVII.

RELIGIOUS SOCIETIES.

SECTION

5569. Trustees of, may hold land, etc., in perpetual succession.

SECTION

5570. May defend and prosecute suits, etc.

SECTION 5569. All lands and tenements, not exceeding forty acres, that have been or hereafter may be conveyed by purchase to any person or persons as trustee or trustees in trust for the use of any religious society within this state, either for a meeting-house, burying-ground, camp-ground or residence for their preacher, shall descend, with the improvements and appurtenances, in perpetual succession, in trust to such trustees as shall, from time to time, be elected or appointed by any such religious society according to the rules and regulations of such society.

SEC. 5570. The trustee or trustees for the time being of any religious society aforesaid shall have the same power to defend and prosecute suits at law or in equity, and do all other acts for the protection, improvement and preservation of said property, as individuals may do in relation to their individual property. *Rev. Stat., chap. 125.*

CHAPTER CXXVIII.

REPLEVIN (a).

SECTION

5571. In an action to recover personal property, plaintiff may claim delivery of.
 5572, 5573. Affidavit for order of delivery, requisites of.
 5574. Order, to whom addressed and delivered; contents of; return of; clause for arrest, etc.
 5575. Plaintiff to execute bond before delivery of property.
 5576. When defendant may be arrested.

SECTION

5577. Bond to release person of defendant.
 5578. Where action brought against sheriff or other officer.
 5579, 5580, 5581, 5582. How order for delivery executed; duty of sheriff.
 5583. Proceedings where property claimed by stranger.
 5584. Several orders may issue directed to different counties.

SECTION 5571. The plaintiff, in an action to recover the possession of specific personal property, may, at the commencement of the action, or at any time before judgment, claim the immediate delivery of the property, as herein provided. *Civil Code*, sec. 202.

SEC. 5572. An order for the delivery of property to the plaintiff shall be made by the clerk (b) when there is filed in his office an affidavit of the plaintiff, or of some one in his behalf, showing (c):

First. A particular description of the property claimed.

Second. Its actual value, and the damages which the affiant believes the plaintiff ought to recover for the detention thereof.

Third. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property (cc).

(a) Under analogous provisions in the codes of other states, it is held that the remedy provided by this chapter supersedes the former actions of replevin and detinue. Replevin lay where there was an unlawful taking, and detinue where there was an unlawful detention; and the code provides this remedy for all unlawful detentions, whether the taking was unlawful or of right. 2 *Nash's Pleadings and Practice*, 812, *et seq.* (4th edition); *Nichols v. Michael et al.*, 23 N. Y. (9 *Smith*), 264; *Roberts v. Randel*, 3 *Sandf.* (N. Y.), 707; *Rockwell v. Saunders*, 19 *Barb.*, 481.

For form of verdict, see SEC. 5145; for mode of entering judgment, see SEC. 5181.

(b) Justices of the peace have concurrent jurisdiction with the circuit court in suits for the recovery of personal property where the value of the property does not exceed the sum of three hundred dollars. See *art. VII, sec. 40, Const.* The rules of proceedings in such suits in the circuit court, so far as applicable, govern in justices' courts. SEC. 4124. But no complaint need be filed there when the plaintiff's affidavit contains a statement of the facts constituting the cause of action. *Hanner v. Bailey*, 30—681.

(c) The affidavit is no part of the complaint. *Donnelly v. Wheeler*, 34—111. It may be amended in the circuit court on appeal from a justice's court so as to enlarge the damages claimed. *Hanf v. Ford*, 37—544.

(cc) A trustee may maintain replevin for the trust property, but the beneficiaries in the trust can not. *Gates v. Bennett*, 33—475. One tenant in common can not maintain it against his co-tenant for his part of a common crop unless there has been a division of it, consummated by an assignment and appropriation of a part to each. *Ward v. Worthington*, *Ib.*, 830. See, also, *Person v. Wright & Montgomery*, 35—169. Title, general or special, and a right to immediate possession are both necessary to maintain replevin. *Thatcher v. Franklin*, 37—64. A landlord's lien will not sustain it for the crop. *Knox v. Hellums*, 38—413; *Bell v. Matheny*, 36—572. As to when it may be maintained for property not paid for, see *Ferguson v. Hetherington*, 39—438. It can not be maintained upon a title acquired after suit. *McKennon v. May*, *Ib.*, 442. Nor for cotton mixed in the same bale with defendant's. *Ib.* As to replevin by mortgagee, see *Hudson v. Snipes*, 40—75; by partner against vendee of co-partner, *Harkey v. Tushman*, 40—551; for property obtained by fraud, *Sidler v. Leuwers*, 42—148; for colt reserved from sale of dam while in foal, *Andrews v. Cox*, *Ib.*, 478.

Fourth. That the property is wrongfully detained by the defendant (†), with the alleged cause of the detention thereof, according to the best knowledge, information and belief of the affiant.

Fifth. That it has not been taken for a tax or fine against the plaintiff, or under any order or judgment of a court against him, or seized under an execution or attachment against his property, or, if so seized, that it is by statute exempt from such seizure.

Sixth. That the plaintiff's cause of action has accrued within one year (d). Where the action is brought to recover property taken under an execution, the affidavit must state the fact of the taking, and the nature of the process under which it was done. *Civil Code, sec. 203, as amended 1871.*

SEC. 5573. Where the delivery of several articles of property is claimed, the affidavit must state the value of each. *Ib., sec. 204.*

SEC. 5574. The order for the delivery of the property to the plaintiff shall be addressed and delivered, with a copy thereof, to the sheriff. It shall state the names of the parties to the action, and the court in which the action is brought, and direct the sheriff to take the property, describing it (‡) and stating its value as in the affidavit of the plaintiff, and deliver it to him, and make return of the order on a day to be named therein, and to summon the defendant to appear on such day in the court and answer the plaintiff in the premises; and if the plaintiff shall file an additional affidavit that he believes the property has been concealed, removed or disposed of in any way, with intent to defeat the plaintiff's action, the clerk or magistrate shall insert a clause commanding the sheriff, or other officer, that if the property mentioned in the order can not be had, to take the body of the defendant, so that he appear at the return day of the order to answer the premises. The order shall be made returnable as an order of arrest is directed to be returned (*). *Ib., sec. 205, as amended by act Dec. 14, 1875.*

SEC. 5575. The order shall not be complied with by the sheriff until there has been executed in his presence, by one or more sufficient sureties of the plaintiff, a bond to the defendant to the effect that the plaintiff shall duly prosecute the action, and that he shall perform the judgment of the court therein by returning the property, if a return thereof shall be adjudged, and by paying such sums of money as may be adjudged against him in the action, not exceeding double the value of the property and the costs of the action. *Ib., sec. 206.*

SEC. 5576. If the property described in the order shall have been removed or concealed, so that the officer can not make delivery thereof, he shall (when the order contains a *capias* clause) arrest the body of the defendant, and hold him in custody in the same manner as on a *capias ad respondendum* in a personal action, until he shall execute the bond prescribed in the next section, or be otherwise legally discharged.

SEC. 5577. The defendant shall be entitled to be discharged from such arrest at any time before final judgment had in the cause, upon executing to

(†) One wrongfully detaining property, and refusing to deliver it on demand, may be sued in replevin, though he has parted with possession at the time of the suit. *Harkey v. Tillman*, 40—551.

(d) See *Payne v. Bruton*, 10—53. Three years is the limitation in actions of replevin. *Phipps v. Martin*, 33—207.

(‡) An order directing the officer to replevy bales of cotton gives no authority to seize seed cotton. *Chandler v. Smith*, 34—527.

(*) For return day of order of arrest, see SEC. 272.

the officer who shall have made such arrest, with the addition of his name of office, a bond in a penalty of at least double the value of the property described as sworn to in the affidavit, with such security as shall be approved by such officer, conditioned that such defendant shall abide the order and judgment of the court in such action, and that he will cause special bail to be put in, if the same be required. *Ib.*, sec. 205, as amended by act Dec. 14, 1875.

SEC. 5578. Where the action is brought against a sheriff or other officer to recover possession of property taken by him under an execution against a person other than the plaintiff, the bond provided for in section 5575 shall be to the effect that the plaintiff shall duly prosecute the action, and that he shall perform the judgment of the court therein by returning the property, if a return thereof shall be adjudged, and by paying to the defendant or to the plaintiff in the execution, as may be directed by the court, such sums of money as may be adjudged against the plaintiff in the action, not exceeding double the value of the property and the costs of the action.

SEC. 5579. The sheriff shall execute the order by taking the property therein mentioned, if it is found in the possession of the defendant (dd), or of his agent, or of any other person who obtained possession thereof from defendant, directly or indirectly, after the order was placed in the sheriff's hands. He shall also deliver a copy of the order to the defendant, or to the person from whose possession the property is taken, or, if neither can be found, leave it at the usual place of abode of either with some person of the age of sixteen years.

SEC. 5580. If the affidavit of the plaintiff states that the property was taken under an execution, the sheriff shall deliver it to the plaintiff. In every other case he shall retain the property in his possession for two days, unless the bond mentioned in the succeeding section shall be sooner executed.

SEC. 5581. Within two days after the taking of the property by the sheriff, the defendant, or any one for him, may, in the case in which the property was not taken under an execution, cause a bond to be executed to the plaintiff in the presence of the sheriff, by one or more sufficient sureties, in double the value of the property, to the effect that the defendant shall perform the judgment of the court in the action (e); whereupon the sheriff shall restore the property to the defendant, or to the person in whose possession it was found. If such bond is not executed within the time above limited, the sheriff shall deliver the property to the plaintiff. He shall return the bonds with the order.

SEC. 5582. Before taking any bond the sheriff shall, upon the suggestion of either party that the value of the property is not truly stated in the order for its delivery, and where the suggestion is on the part of the defendant, on his producing the property to the sheriff, select three disinterested housekeepers to appraise the same under oath, to be administered by him, whose appraisal, indorsed upon the order, shall be regarded as the value of the property in taking the bonds.

SEC. 5583. If another person than the defendant or his agent claims the property taken by the sheriff and delivers to the sheriff his affidavit that he is entitled to the possession thereof, the sheriff shall not be bound to keep it or

(dd) A party in possession of goods can not avoid replevin by wrongfully transferring the possession to another. *Washington v. Love*, 34—93.

(e) See *Hanf v. Ford*, 37—544.

deliver it to the plaintiff unless he shall, within two days after the delivery to him, or to his agent or attorney, by the sheriff, of a copy of the affidavit, indemnify the sheriff against the claim by a bond, executed by one or more sufficient sureties, in double the value of the property (ee). No claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made. He shall return the affidavit of the claimant, with his proceedings thereon, to the clerk's office.

SEC. 5584. An order may, at any time before judgment, be directed to any other county for the delivery of the property claimed. And several orders may issue at the same time, or successively, at the option of the plaintiff. But only one of them shall be taxed in the costs, unless otherwise ordered by the court. *Ib.*, secs. 207-211 and 213, 214.

(ee) See *Harris v. Harrison*, 40—50.

CHAPTER CXXIX.

REVENUE.

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DEFINITION OF WORDS AND PHRASES.

SECTION 5585. The term "real property and lands," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out in town lots or otherwise, with all things therein contained, but also all buildings, structures and improvements, and other fixtures of whatever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto.

The term "investment in bonds," wherever used in this act, shall be held to mean and include all moneys invested in bonds of whatever kind, or certificates of indebtedness commonly called scrip, whether issued by incorporated or unincorporated companies, towns, cities, townships, counties, states or other corporations, held by persons residing in this state, either by themselves or by others for them, whether for themselves or as guardians, trustees or agents.

The term "investment in stocks," wherever used in this act, shall be held to mean and include all moneys invested in public stocks of this or any other

state, or in any association, corporation, joint stock company or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this act, held by persons residing in this state, either for themselves or as guardians, trustees or agents, or by others for them.

The term "oath," wherever used in this act, shall be held to mean oath or affirmation. Every word in this act importing the masculine gender shall extend and be applied to females as well as males, and the word "person," as used in this act, shall be held to mean and include firm, company and corporation.

The term "personal property," wherever used in this act, shall be held to mean and include:

First. Every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming a part of any parcel of real property, as hereinbefore defined.

Second. The capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name the same may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat of whatsoever name and description, used, or designed to be used, exclusively or partially, in navigating any of the waters within or bordering on this state, whether such ship, vessel or boat shall be within the jurisdiction of this state or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office, or within any collector's district of this state or not.

The term "money" or "moneys," wherever used in this act, shall be held to mean and include gold and silver coin and bank notes of solvent banks in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw in money on demand, within this state or elsewhere, provided the same is subject to order.

All citizens of this state shall, when they give to the assessor a list of their personal property, moneys and credits, state under oath whether they have any such deposits or balances on account or otherwise, and the amount of such deposits, balance or otherwise on account.

The term "credits," wherever used in this act, shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or service due, or to become due, to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this state, when added together (estimating every such claim or demand at its true value in money), over and above the sum of legal *bona fide* debts owing by such person. In making up the sum of such debts owing, there shall be taken into account no obligation to any mutual insurance company; nor any unpaid subscription to the capital stock of any joint stock company; nor any subscription for any religious, scientific, literary or charitable purpose; nor any acknowledgment of any indebtedness, unless founded on some consideration

actually received, and believed at the time of making such acknowledgment to be a full consideration therefor; nor any acknowledgment of debt made for the purpose of diminishing the amount of credits to be listed for taxation; nor any greater amount or portion of any liability as surety than the person required to make the statement of such credits believes that such surety is in equity bound and will be compelled to pay or contribute.

Pensions receivable from the United States, or from any state (salaries or payments excepted), shall not be held to be annuities within the meaning of this act.

PROPERTY AND PRIVILEGES SUBJECT TO TAXATION.

SEC. 5586. All property, whether real or personal, in this state; all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of persons residing therein; the property of corporations now existing or hereafter created, and property of all banks or banking companies now existing or hereafter created, and of all bankers and brokers, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, or the value thereof, shall be entered on the list of taxable property for that purpose.

SEC. 5587. All tracts of land set apart for school or other purposes, and donated to the state by the congress of the United States for a specific purpose, and sold under the authority of the laws of this state to any person, shall be subject to taxation, as other land in this state, immediately after sale; but such lands shall not be sold for taxes until the purchase money therefor shall be fully paid (a), but shall be returned delinquent, as other lands, and the personal property of the purchaser shall be subject to sale to pay the taxes thereon. *Provided*, that until such payment of taxes, or the collection thereof from the personal property, such lands shall be continued on the tax-books, and the taxes of each year charged thereon and added to the tax and penalty due when the same became delinquent until payment be made or the lands resold by the proper officer or authority, pursuant to the laws in force for the sale of such lands.

Privileges Subject to Taxation for State Purposes.

SEC. 5588. There shall be levied and collected as a state tax the sum of twenty-five dollars on each and every hawker or peddler, whether by land or water (*), for the privilege of hawking and peddling goods, wares and merchandise throughout this state for the term of six months and less.

SEC. 5589. There shall be levied and collected as a state tax the sum of one hundred dollars upon each and every clock peddler, each and every agent for the sale of lightning rods and stove-range agents, doing business in this state for the term of one year or less.

SEC. 5590. There shall be levied and collected as a state tax upon each and every sewing machine company or general agent for the sale of sewing machines, doing business in this state for the term of one year or less, the sum of two hundred dollars. *Provided*, that any sewing machine company or general

(a) See SEC. 4321.

(*) See SEC. 5883.

sewing machine agent, who shall have paid said tax, may send his or their employes or such agents into any other county or counties than that in which his or their principal business may be carried on, upon payment of a county tax of five dollars for each employe or sole agent in each of such additional counties wherein such employe or sole agent may be engaged in carrying on any part of his or their said business for the term of one year or less.

SEC. 5591. There shall be levied and collected as a state tax the sum of one hundred dollars upon each and every traveling agent for any life insurance, mutual endowment, matrimonial, mutual aid, nuptial association or company doing business in this state for the term of one year or less.

SEC. 5592. There shall be levied and collected as a state tax the sum of three hundred dollars upon each and every vendor of spirituous, vinous or malt liquors doing business in this state for the term of one year or less, commencing January 1, 1884 (**).

SEC. 5593. Every person wishing to engage in the business of hawking or peddling, peddling clocks, or as agents for the sale of sewing machines, lightning rods, stove ranges, or as traveling agent for any life insurance, mutual endowment, endowment matrimonial, mutual aid or nuptial association or company, or wishing to engage in the sale of spirituous, vinous or malt liquors in this state, shall first pay for and take out a license for the privilege of engaging in any business specified in this section (b).

SEC. 5594. Any person who shall engage in the business of hawking or peddling, or in peddling clocks, or as agent for the sale of sewing machines, stove ranges or lightning rods, or as traveling agent for any life insurance, mutual endowment, endowment matrimonial, mutual aid, nuptial association or company, whether incorporated or not, or shall engage in the sale of spirituous, vinous or malt liquors in this state, without having paid the tax as provided in this act for said privilege, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in double the amount of license he would be by the provisions of this act chargeable with.

Privileges Subject to Taxation for County Purposes.

SEC. 5595. In addition to the revenue arising from ferry, dram-shop and drinking-saloon license, which is hereby appropriated for county purposes, there shall be levied and collected a county tax on the following articles, viz.:

A tax of three dollars on each criminal conviction in courts of record (†).

A tax of three dollars on each civil suit in courts of record, where a verdict is rendered by a jury.

A tax of fifty cents upon each writ of summons and writ of execution issued out of any of the courts of record in this state; and a tax of fifty cents upon the certificate of record of each instrument of writing recorded in any

(⁰⁰⁰) See chap. 98.

(b) See SEC. 5795. The authority of the legislature to regulate the exercise of privileges or the following of pursuits and occupations does not fall properly within its taxing powers, but within its police powers. So persons desiring to exercise privileges or engage in callings really useful to society may be required to obtain license and pay a reasonable compensation therefor; such as the keepers of ferries, draymen, hackmen, and even persons who furnish meat or bread to communities. *Straub & Lohman v. Gordon*, 27—625; *Cook's Const. Lim.*, 496-7.

(†) See *Murphy v. State*, 38—514.

recorder's office of this state (bb); and a tax of fifty cents on each marriage license issued. Courts of justices of the peace are not courts of record within the meaning of this section.

SEC. 5596. There shall be collected as a county tax :

First. The sum of twenty-five dollars on each and every hawker or peddler, by land or water (*), for the privilege of hawking and peddling goods, wares and merchandise in any county in this state for the term of six months or less.

Second. The sum of one hundred dollars on each and every circus or menagerie for each day's exhibition given in any county in this state, and fifty dollars for each side-show connected therewith.

Third. The sum of five dollars for each public exhibition given by any person or persons in any county in this state, any part of the proceeds of which is for his or their personal profit.

Fourth. The sum of ten dollars upon each and every auctioneer who follows the business for profit, for the privilege of selling any lands, goods, wares and merchandise at public outcry in any county in this state for the term of six months or less (c).

Fifth. The sum of four hundred dollars upon each and every vendor of spirituous, vinous or malt liquors, in any quantity, in any county in this state for the term of one year or less (†).

PROPERTY EXEMPT FROM TAXATION.

SEC. 5597. All property described in this section, to the extent herein limited, shall be exempt from taxation :

First. All public school-houses (‡) and houses used exclusively for public worship, and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit.

Second. All public colleges, academies, all buildings connected with the same, and all houses connected with public institutions of learning not used with a view to profit. This provision shall not extend to leasehold estate, or to real property held under the authority of any college or university of learning in this state.

Third. All lands used exclusively as grave-yards, or grounds for burying the dead, except such as are held by any person, or persons, company or corporation, with a view to profit, or for the purpose of speculation in the sale thereof.

Fourth. All property, whether real or personal, belonging exclusively to this state or the United States.

Fifth. All buildings belonging to counties used for holding courts, for jails or for county offices, with the grounds, not exceeding in any county ten acres, on which said buildings are erected.

(bb) See *Lee County v. Abrahams*, 34—166.

(*) See SEC. 5883.

(c) Auctioneers are also required to pay a duty on sales made by them. See SEC. 435.

(†) See chap. 98.

(‡) See art. XVI, sec. 5, Const.; *Phillips County v. Sister Estelle*, 42—536.

Sixth. All lands, houses and other buildings belonging to any county, city or town used exclusively for the accommodation of the poor.

Seventh. All buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions.

Eighth. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe-keeping thereof, and for the meeting of fire companies, whether belonging to any town or to any fire company organized therein.

Ninth. All market-houses, public squares, other public grounds, town and city houses or halls, owned and used exclusively for public purposes, and all works, machinery and fixtures belonging to any town, and used exclusively for conveying water to said town. *Act March 31, 1883, secs. 1-7.*

RATE OF TAXATION.

For State Purposes.

SEC. 5598. For the purpose of raising a revenue to support the state government, paying the interest on the public debt, and the support of common schools, a tax shall be levied on the taxable property of this state as follows: For defraying the general expenses of the state government and supplying deficiencies, there shall be levied for each fiscal year, beginning on the first day of July of each year, one-half of one mill; and for the purpose of creating a sinking fund and paying interest on the public debt, four mills on the dollar; for the support of public schools, two mills on the dollar. There shall also be levied, annually, one dollar *per capita* on every male inhabitant over the age of twenty-one years, for common school purposes. *Act March 5, 1879.*

For County and School Purposes.

SEC. 5599. It shall be unlawful for the county court to levy on the taxable property of the county in any one year a greater rate per centum than is in this section authorized (cc), to wit: For all county purposes, not exceeding five mills on the dollar, and for paying indebtedness existing at the time of the adoption of the present constitution not exceeding five mills on the dollar (ccc); for the support and maintenance of public schools in any school district of a county, and to pay existing indebtedness of any such district, such rate, not exceeding five mills on the dollar, as may be determined by vote of the qualified electors of such school district (*).

SEC. 5600. The county court of each county, composed of the judge and a majority of the justices of the peace of each county, shall meet annually, on the first Monday in July, for the purpose of levying the county taxes and making appropriations for the expenses of the county.

(cc) As to effect of excessive levy, see *Worthen v. Badgett*, 32—496; *Rogers v. Kerr*, 42—100.

(ccc) See art. XVI, sec. 9. *Const.*; *Graham v. Parham*, 32—676; *Cope v. Collins*, 37—649; *Brodie v. McCabe*, 33—630.

(*) See *Rogers v. Kerr*, 42—100; *Hodgkin v. Fry*, 33—716.

SEC. 5601. Said court shall determine the amount to be raised for ordinary county purposes; for public buildings; for support of the poor; for bridges; for roads, and for interest and principal on the county debt.

SEC. 5602. The court shall set forth upon the record of proceedings especially the amount to be raised for each of the above defined purposes.

SEC. 5603. The clerk of the county court shall carefully ascertain the amount collected for each purpose under said levy; and it shall not be lawful to use any specific fund for any other purpose than the one for which the same was specifically levied, until the purpose for which such tax was specifically levied shall have been accomplished.

SEC. 5604. The taxes that may be levied by authority of any law in any township or school district shall be made and certified by the proper officer or person to the clerk of the county court before the first Monday in July in each year.

For Cities and Towns.

SEC. 5605. The amount of taxes levied in any one year by the constituted authorities of any city or town shall not exceed the amount specified in this section, viz.: For all city or town purposes, five mills on the dollar; for paying indebtedness existing at the time of the adoption of the present constitution of the state, not more than five mills on the dollar (d). *Provided*, the above limitations shall not be construed to prohibit assessments on property adjacent to local improvements made in any city or town for the purpose of paying the costs thereof and damages occasioned thereby.

SEC. 5606. All levies of taxes in cities and towns shall be based upon the appraisalment of the county assessor, as equalized for the levy of state and county taxes, and placed upon the tax-book by the clerk of the county court, and the same shall be collected in the same manner and by the same person that county taxes are collected.

BY WHOM AND HOW OBJECTIONS MAY BE MADE TO LEVY OF TAXES.

SEC. 5607. Any person having real or personal property assessed for taxation may appear in person, or by attorney, before the county court at the time of the levy of taxes by it, or at the succeeding term thereafter, and, by petition or remonstrance, object to the levy of any specific tax for illegality, and may, by sworn petition, set forth and show any facts upon which such illegality rests. If the same be based upon facts, it shall be the duty of the court to determine both the law and the facts presented, and, for that purpose, shall hear any testimony offered; and if the court should rule against the objection so presented, the party so objecting to such levy may appeal from such ruling to the circuit court of the county, and upon giving bond, within ten days, with good and sufficient security, in double the amount of specific tax levied upon the property of the party objecting, subject to the approval of the court, conditioned for the payment of such tax, should it be decided to have been lawfully levied, the same shall operate as a *supersedeas* of the collection of the same. *Provided*, that it shall not operate to prevent the same being

(d) See art. XII, sec. 4, Const., and note.

placed upon the tax-book. Said bond shall be given to the State of Arkansas, and, in the event such levy shall finally be declared illegal, such judgment shall operate as an acquittal to the collector and his securities for the non-collection of the tax. If the tax be finally declared legal, the collector shall immediately proceed to collect the same as in other cases, or by action on the appeal bond. *And, provided, further,* that any tax-payer feeling himself aggrieved by any such levy may, at any time before the returning of delinquent taxes by the collector for that year, appeal as hereinbefore provided.

SEC. 5608. Any person interested in the levy of such tax may resist such petition to prevent a levy, either before the county court or in the circuit court on appeal. In all cases where an appeal is taken, the clerk of the county court shall enter on the tax-books, opposite the name of the party or tract or lot of land, the *supersedeas* of such specific tax.

SEC. 5609. The county court shall employ counsel to attend before it at the hearing, and should the same be appealed to the circuit court, the prosecuting attorney, and, if to the supreme court, the attorney-general, shall appear in the interest and behalf of the levy of the tax. *Provided,* that the real or personal property upon which such illegal specific tax is alleged to have been levied shall not be withheld from sale on account of any taxes for any purpose due, or to become due, upon the same, and which has not been paid as provided by law, and against the collection of which no petition has been filed.

PROPERTY—WHEN, BY WHOM AND HOW LISTED.

SEC. 5610. Every person of full age and sound mind shall list the real property of which he is the owner, situated in the county in which he resides, the personal property of which he is the owner, and all money in his possession; and he shall list all moneys invested, loaned or otherwise controlled by him, either for himself or as agent, attorney or on account of any other person or persons, companies or corporations whatsoever, and all moneys deposited, subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic, whether in or out of said county or state.

SEC. 5611. If any person shall have converted moneys, credits or other personal property in the year preceding the first Monday in February of the year in which he is required to assess his property into bonds or other securities of the United States or this state not taxed, and shall hold or control such bonds or securities when he is required to list his property, he shall list the monthly average value of said moneys, credits or other property held or controlled by him. *Provided,* that any indebtedness of said person, or of persons represented by him, created by investments in said bonds or other securities, shall not be deducted from the amount of credits in making up his list for taxation.

SEC. 5612. No person shall be required to list a greater portion of any credits than he believes will be acquired or can be collected, nor any greater portion of any obligation given to secure the payment of rent than the amount of rent that shall have accrued on the lease, and shall remain due and unpaid at the time of listing; and no person shall be required to include in his state-

ment, as a part of the personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise which he is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation in this state.

SEC. 5613. The property of every ward shall be listed by his guardian; of every minor, idiot or lunatic, having no other guardian, by his father, if living; if not, by his mother, if living, and, if neither father nor mother be living, by the person having such property in charge; of every wife, by her husband, if of sound mind; if not, by herself, if she be of sound mind; of every person for whose benefit property is held in trust, by the trustee; of every estate of a deceased person, by the executor or administrator; of corporations whose assets are in the hands of receivers, by the receiver; of every company, firm, body politic or corporate, by the president or principal accounting officer, partner or agent thereof.

SEC. 5614. Every person required to list property on behalf of others shall list it in the same township or school district in which he would be required by law to list if such property was his own; but he shall list it separately from his own, specifying in each case the name of the person, estate, company or corporation to whom it belongs, and all real property and merchants' and manufacturers' stock, and all the articles mentioned in section 5620; and all personal property, farms and real property not in towns shall be returned for taxation and taxed in the township, city or town or school district in which it is situated (all shares of stock in any national bank located in this state, whether held and owned by residents or non-residents of this state, shall be listed for taxation and taxed in the city, town, township or school district in which the bank is located), and all other personal property, moneys, credits or effects shall be entered for taxation in the township, school district, city or town in which the person to be charged with the taxes thereon resided at the time of listing the same by the assessor, if the person resides in the county in which such property, moneys and effects were listed; if not, then such property, moneys and effects shall be entered for taxation and taxed in the town, township or school district where it was situate when listed.

SEC. 5615. Property held under a lease for a term exceeding ten years belonging to the state, or to any religious, scientific or benevolent society or institution, whether incorporated or unincorporated, and school, seminary, saline or other lands, shall be considered, for all purposes of taxation, as the personal property of the person holding the same, and shall be listed as such by such person or his agent as in other cases.

SEC. 5616. Each person required to list property shall make out and deliver to the assessor a statement, verified by his oath or affirmation, of all the personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise in his possession or under his control on the first Monday in February of each year, and which he is required to list for taxation, either as a holder or owner thereof, or as a guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. Said oath shall be in the following form:

"I, ———, do solemnly swear (or affirm) that the list of property, with its value as now rendered by me, is a just and true account of all the

property I am required by law to render as subject to taxation in my own name or right, or that of any other person for whom I ought to list taxable property; that I have estimated and put down the value of such property, not at what it might sell for at forced sale, but at what would be its fair market value, so help me God."

SEC. 5617. If any such tax-payer shall willfully neglect or refuse to deliver such list on oath to the assessor, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not to exceed one hundred dollars, and be confined in the county jail for a period not to exceed three months, or either.

SEC. 5618. The assessor shall furnish to the proper prosecuting attorney the names of all persons so willfully refusing to give in such sworn list of their property, and said prosecuting attorney shall present the same to the grand jury.

SEC. 5619. The assessor shall not take a list of taxable property from any person without administering to such person the oath in section 5616 provided; and any assessor who shall violate this provision shall be guilty of a nonfeasance in office, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than fifty dollars; and each failure so to do shall constitute a separate offense. *Provided*, such oath may be made before any officer authorized to administer oaths.

SEC. 5620. Such statement shall truly and distinctly set forth :

First. The number of horses and value thereof.

Second. The number of neat cattle and value thereof.

Third. The number of mules and asses and value thereof.

Fourth. The number of sheep and value thereof.

Fifth. The number of hogs and value thereof.

Sixth. Every carriage or wagon of whatsoever kind and value thereof.

Seventh. Every gold and silver watch, or watches of any other metal, diamonds and jewelry of every kind, and value thereof.

Eighth. Every piano-forte and the value thereof.

Ninth. The value of the goods and merchandise which such person is required to list as merchant.

Tenth. The value of the property which such person is required to list as a banker, broker or stock jobber.

Eleventh. The value of the materials and manufactured articles which such person is required to list as a manufacturer.

Twelfth. The value of moneys and credits required to be listed, including all balances of book accounts, in or out of this state.

Thirteenth. The value of the money invested in bonds, stocks, joint stock companies or otherwise which such person is required to list.

Fourteenth. The value of moneys, credits or other personal property converted into bonds or other securities of the United States or of this state not taxed, in the year preceding the first Monday in February, which bonds or securities were on said first Monday in February in the possession or under the control of the person making such conversion.

Fifteenth. The total value of all other articles of personal property which such person by this act is required to list.

SEC. 5621. If there be no articles of personal property, moneys or credits, investments in bonds, stock, joint stock companies or otherwise which such person would be required by this act to list on his own account, or on account of others, he may set forth such facts to the assessor, who shall require the oath or affirmation of such person of the truth of the same; said oath shall be in the following form:

I, ———, do solemnly swear that I was not, on the first Monday in February last, possessed of personal property, moneys, credits, investments in bonds, stock, joint stock companies or otherwise of any character or description, and that I have not under my charge, control or management any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise of any character or description. And that I have not under my charge, control or management any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, belonging to any other person, that was subject to taxation on the first Monday in February last, that have not been listed and appraised for taxation, either in or out of this state, and that I have not invested in non-taxable securities for myself or others.

Sworn and subscribed to before me this ——— day of ———, 18—.

—————, *Assessor*.

SEC. 5622. The assessment of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and the valuation of all lands, lots and new structures which have not been previously valued and placed upon the tax-books, shall be made between the first Monday in February and the thirtieth day of April of each year.

SEC. 5623. Personal property of every description and credits shall be assessed in the name of the person who was the owner on the first Monday in February in the year in which the assessment was made.

SEC. 5624. All lands and town lots sold for the payment of taxes shall be thereafter assessed in the name of the purchaser.

SEC. 5625. It is hereby made the duty of every person seized of or holding lands, as mentioned in this act, to list the same for taxation with the assessor, as prescribed in section 5622, on or before the first Monday in June after the same shall be subject to taxation, and, in case of neglecting to list the same as aforesaid, the clerk of the county court shall, when listed, charge upon each tract so neglected to be listed the taxes for each year the same shall have been omitted after becoming liable for taxation, together with ten per centum penalty on each year's taxes, in addition to the taxes of the current year.

Merchandise.

SEC. 5626. Any person owning or having in his possession, or under his control, within this state, with authority to sell the same, any personal property purchased with a view to its being sold at a profit, or which has been consigned to him from any place out of this state, to be sold within the same, shall be held to be a merchant for the purpose of this act. Such property shall be listed for taxation, and in estimating the value thereof the merchant shall take the average value of such property in his possession or under his control during the year immediately preceding the first Monday in February of the year in

which the assessment is made; if he has not been engaged in the business for one year, then he shall take the average value during such time as he shall have been so engaged, and, if he be commencing, he shall take the value of the property at the time of assessment.

SEC. 5627. Each merchant, in giving in a list of value of personal property as provided in the preceding section, shall include in said valuation all good balances of accounts on his books, and all notes at their true value in money, and said list shall be rendered under oath as prescribed by this act in cases of personal property.

Manufacturers.

SEC. 5628. Every person who shall purchase, receive or hold personal property of any description for the purpose of adding to the value thereof by process of manufacturing, refining, rectifying, or by combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer, and he shall make out and deliver to the assessor a sworn statement of the amount of his other personal property subject to taxation, also including in his statement the average value estimated, as provided in section 5626, of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining, which, from time to time, he shall have on hand during the year next previous to the time of making such statement, if so long he shall have been engaged in such manufacturing business, and, if not, then during the time he shall have been so engaged. Every person owning a manufacturing establishment of any kind and every manufacturer shall list, as a part of his manufacturer's stock, the value of all engines and machinery of every description used or designed to be used for the aforesaid purpose.

Banks, Brokers and Stock Jobbers.

SEC. 5629. Every corporation, company, individual person or association of persons, whether authorized by law to issue notes for circulation or not, that shall keep an office, counting-house or other place for the transaction of business in this state, and shall discount, buy or sell or exchange notes, bonds, stocks, certificates of public debt, or other evidences of debt, claims or demands, with a view to profit, shall be deemed a bank within the meaning of this act.

SEC. 5630. Every bank shall annually, on the first Monday in March, in each year, make out and deliver to the assessor a correct statement, attested by the oath of the president and cashier of such bank, and if there be no president or cashier, then by the oath of the principal manager and principal accountant of such bank, setting forth:

First. The amount of capital, whether divided into shares or not, actually paid in, or secured to be paid by note or otherwise, or in any manner procured or furnished, to be employed in its banking business.

Second. The amount of undivided profits arising from such business belonging to the bank, whether in its possession or subject to its control, or loaned or otherwise invested for its benefit.

Third. The value of moneys, credits or other personal property converted into bonds or other securities of the United States, or of this state, not taxed in the year immediately preceding the first Monday in February of the year in which the assessment is made, and which said bonds or securities on said first Monday in February were in the possession or control of such bank.

Fourth. The amount loaned to or deposited with such bank for a term certain, or which, by agreement or understanding between the parties, is not to be withdrawn on demand, excepting the amount which may have been deposited with any bank established as a clearing-house for the redemption of the notes of banks making such deposits, and on which no interest is charged or received by the bank making such deposit.

SEC. 5631. Said several amounts shall truly represent the condition of the means, property and assets of the bank described herein, as they shall have existed on the first Monday in February, and shall be added together, and the gross sum so produced shall be deemed the amount of property employed in banking for the then current year by such bank.

SEC. 5632. The shares of persons in banks taxable by law, that the holders or owners thereof are not required to list in person by the provisions of this act, shall be listed by the president or principal accounting officer or agent thereof, showing the name or names of the person owning or holding the same.

SEC. 5633. The taxes assessed upon the shares of stock thus listed shall be paid by the corporation or company, respectively, and they may recover from the owner or owners of such shares the amount of taxes to be paid by them, or deduct the same from the dividend accruing on such shares, and the amount paid shall be a lien on such shares, respectively, and shall be paid before a transfer of such stock or shares can be made.

SEC. 5634. The assessor shall return to the clerk of the county court the statement described in section 5630, made by any bank in his county, and the amount so returned shall be placed upon the tax-books of the county and taxed as other personal property in such city, town, ward or school districts as the same may be situate.

SEC. 5635. It shall be the duty of every assessor, in whose jurisdiction there shall be located any such bank or banking company, to leave with some proper officer or agent of such bank or banking company notice to make out and deliver, within ten days, the statement required in section 5630, such notice to be delivered at least ten days before the first Monday in March of each year.

SEC. 5636. Each assessor of any county, within the limits of which any such bank or banking company may be located, in case any president or cashier, agent or principal accounting officer of such bank or banking company shall refuse or neglect to make out and deliver to the assessor the statement hereinbefore required, shall, as in any other case, ascertain the amount of such capital stock, surplus and contingent fund, and undivided profits, and shall return the same to the clerk of the county court, and the amount thus ascertained, with fifty per centum thereto added as a penalty, shall be entered upon the tax-book for taxation.

SEC. 5637. When any person shall commence or engage in the business of dealing in stocks of any description, or in buying or shoving any kind of bills of exchange, stocks, drafts, bank-notes, promissory notes, or other kind

of writings obligatory, the average value of whose personal property and moneys intended to be employed in such business shall not have been previously entered on the assessor's list for taxation in said county, such person shall report to the assessor the probable average value of the moneys and other personal property by him intended to be employed in such business until the first Monday in February next succeeding, and the assessor shall deliver a list thereof to the county clerk, who shall enter the same upon the tax-book and extend the taxes thereon as in case of other personal property.

SEC. 5638. If any person shall commence or engage in any business as aforesaid, and shall not within thirty days thereafter report to the assessor and make payment to the county collector as before required, he shall forfeit and pay double the amount of taxes that would be due thereon, as a penalty for such failure, upon the amount returned for taxation by the assessor.

Express and Telegraph Companies.

SEC. 5639. Any person or persons, joint stock company, association or corporation conveying to, from or through the state, or any part thereof, money, packages, gold or silver plate, or other articles by express, not including the ordinary lines of transportation of merchandise and property, shall be deemed to be an express company. And any person or persons, joint stock company, association or corporation engaged in transmitting to, from, through or in this state telegraphic messages shall be deemed and held to be a telegraph company.

SEC. 5640. Each agent of any express company or telegraph company having its principal office in this state, or in any other state or country and doing business in this state, shall annually, in the month of March, make out and deliver to the assessor of the proper county in which such agent has his place of business a statement, verified by the oath of such agent, showing the entire receipts of such agent for the year next preceding the first Monday in February in the year in which such statement is made for and on account of such company, including its proportion of gross receipts for business done by such company in connection with lines of other companies outside of the limits of this state. *Provided*, the amount which any express company actually pays to railroads or steamboats within this state for the transportation of their freight, upon the money packages, gold and silver plate or other articles, to or from the point at which such agent is located, may be deducted from the gross receipts of such company, as above ascertained, and the balance thus found, as to express companies, and the gross receipts, as above ascertained, for the telegraph companies, shall be by such assessor listed and assessed as personal property.

SEC. 5641. The office furniture and other real and personal property of telegraph and express companies shall be assessed in the county, city or town where the same is used or kept, in like manner as other real and personal property in such county, city or town is assessed.

SEC. 5642. Any agent of such express or telegraph company willfully neglecting or refusing to make out and deliver to the proper assessor such statement during the month of March, as by this act required, shall be guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty dollars nor more than five hundred dollars, and be imprisoned not less than

thirty days nor more than six months (†). And said assessor shall, from the best evidence obtainable, ascertain the amount of the receipts of such agent, and enter the same upon the assessment roll, with fifty per centum penalty thereon.

Pawnbrokers.

SEC. 5643. Every person or company engaged in the business of receiving property in pledge or as security, for money or other things advanced to the pawnor or pledger, shall annually, at the time by this act prescribed for the assessment of personal property, return, under oath, all property pledged to and held by him as a pawnbroker to the assessor of the proper county, who shall list and assess the same to such pawnbroker at its fair cash value.

Mutual Loan, Building, Gas, Telephone, Water and other Corporations and Associations, other than Railroad, Telegraph or Express Companies.

SEC. 5644. The shares of stocks of mutual loan and building associations shall be assessed at their cash value, but only the unredeemed shares of such stock, or those not transferred to the association, shall be taxed, and such unredeemed shares shall be listed in the name of the individual owners thereof.

SEC. 5645. Gas, telephone, bridge, street railroad, savings banks, mutual loan, building, transportation, construction, and all other companies, corporations or associations, incorporated under the laws of this state, or under the laws of any other state, and doing business in this state, other than insurance companies (‡) and the companies and corporations whose taxation is in this act specifically provided for, in addition to the other property required by this act to be listed, shall, through their president, secretary, principal accounting officer or agent, annually, during the month of March, make out and deliver to the assessor of the county where said company or corporation is located or doing business a sworn statement of the capital stock, setting forth particularly:

First. The name and the location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up, its market value, and, if no market value, then the actual value of the shares of stock.

Fourth. The total amount of all indebtedness, except indebtedness for current expenses, excluding from such indebtedness the amount paid for the purchase or improvement of the property.

Fifth. True valuation of all the tangible property belonging to such company or corporation; such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts.

SEC. 5646. The assessor shall, annually, at least ten days before the twenty-eighth day of February, deliver to the president, secretary, accounting officer or agent of any such company, corporation or association located in or doing business in such county a notice in writing to return such schedule by the thirty-first day of March next ensuing. Any president, secretary, principal

(†) See SEC. 1787.

(‡) See SEC. 3832.

accounting officer or agent of any such companies or corporations, upon whom such notice shall have been served, willfully neglecting or refusing to make such return by the thirty-first day of March next ensuing, after delivery of said notice, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both, and the assessor shall, from the best information he can obtain, make out and enter upon the proper assessment roll a list, with the valuation, of all tangible and intangible property belonging to such defaulting company or corporation subject to taxation by the provisions of this act, with fifty per cent. penalty.

Railroad Commissioners.

SEC. 5647. The governor, secretary of state and auditor of public accounts shall be and are hereby constituted a board of railroad commissioners for this state. And on the first Monday in April in each year shall proceed to ascertain the value of all property, including railroad track, rolling stock, water and wood stations, passenger and freight depots, offices, furniture and such other property, real and personal, as is owned by each of the railroads or railways of each company or corporation having existence under the laws of this state, or incorporated in whole or in part therein, and running through or in this state in the manner as hereinafter prescribed.

Manner of Listing and Valuing Property of Railroads.

SEC. 5648. Every person, company or corporation owning or operating a railroad in this state shall return sworn lists or schedules of taxable property of such railroads as hereinafter provided. Such property shall be listed and assessed with reference to its amount, kind and value on the first Monday in March of the year in which it is listed.

SEC. 5649. They shall, in the month of March, in the year 1883, and at the same time every second year thereafter, when required, make out and file with the secretary of state a statement or schedule showing the length of the main and all side-tracks, switches and turn-outs in each county in which the railroad may be located, and in each city and town in said county through or into which the road may run. They shall also state the value of all improvements, stations and structures, including the railroad track, located on the right of way, but such schedule shall not include nor value embankments, tunnels, cuts, ties, trestles or bridges. New companies shall make and file such schedule in March next after the location of their road. When such schedule shall have been once made it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the board of railroad commissioners; but such companies shall annually, during the month of March, report the value of such property by the description set forth in the following section, and note all additions and changes which shall have occurred in such right of way.

SEC. 5650. Such railroad, as described and scheduled in the last preceding section, shall be held to be real estate for the purpose of taxation, and denominated "railroad track," and shall be so listed and valued, and shall be

described in the assessment thereof as the railroad track of the _____ railroad company, in the county, city or town, and such description shall be considered as embracing all the property required to be assessed by section 5649, and when advertised and sold for taxes no other description shall be necessary.

SEC. 5651. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for purposes of taxation, "rolling stock." Every person, company or corporation owning, constructing or operating a railroad in this state shall, in the month of March, annually, make and file with the secretary of state a list or schedule which shall contain a correct detailed inventory of all the rolling stock belonging to such company, together with the true valuation thereof, and which shall distinctly state and set forth the number of locomotives of all classes, passenger cars, dining cars, express cars, coal cars, pay cars, constructing and working cars, caboose cars, hand cars, cattle cars and all other kinds of cars belonging to such road, and also all locomotives and cars not belonging to such company, but hired for its use for a term of not less than six months, it not being intended to tax locomotives or cars temporarily coming into or passing through this state, but only to tax such as are actually owned or leased by the companies in the state. Said schedule shall set forth the number of miles of track on which said rolling stock is used in this state, and the number of miles of track upon which said rolling stock is used in other states.

SEC. 5652. The board of railroad commissioners shall meet on the first Monday in April, in the year eighteen hundred and eighty-three, and at the same time in each year thereafter, at the office of the secretary of state for the State of Arkansas, and, after being duly sworn to fearlessly, impartially and honestly discharge their duties, shall proceed to examine the lists or schedules of the description and value of the railroad track of the railroad companies filed with the secretary of state in accordance with the requirements of this act, and if said schedules are made out in accordance with the provisions of this act, and, in the opinion of the board, the valuation of said railroad track is fair and reasonable, said board shall appraise the same, and it shall be the duty of the secretary of state to certify to the assessor of each county in which such railroad is located so much of said list as values such railroad track as is located in such county, and in any city or town of such county, and such assessor shall list and assess the same as real estate, by the description, as hereinbefore specified.

SEC. 5653. Said board, for the purpose of finding the value of the rolling stock of railroad companies in this state, shall take the total value as stated in the list and schedule of the rolling stock of each of the respective railroads of this state, filed in accordance with the requirements of this act, and divide the same by the number of miles in the entire length of such railroad, and the result shall be the value per mile of such railroad for the purpose of taxation, and the value per mile of any such railroad so ascertained shall be multiplied by the number of miles, or fraction of miles, thereof lying and being in any county, and the product thereof is the sum to be taxed in such county; and it shall be the duty of the secretary of state to certify to the assessor of the respective counties in which said sums are to be taxed the amount to be taxed in their respective counties, and such assessors shall list and assess the same as

personal property, designating the same as "rolling stock of ——— railroad company."

SEC. 5654. All other personal property belonging to any railroad company, except rolling stock, shall be listed and assessed in the county wherever the same may be, on the first day of March in each year; all other real estate, including the buildings and structures thereon, other than that denominated railroad track, belonging to any railroad company in this state, shall be listed and assessed by the assessor of the county in which they are situated, at the same time and in like manner as real estate belonging to individuals is by this act required to be listed and assessed.

SEC. 5655. If any person, corporation or company owning, operating or constructing any railroad in this state shall neglect or refuse to make return to the secretary of state of the statements or schedules required by this act to be returned to him by the first Monday in April, in the year eighteen hundred and eighty-three, and at the same time and in each year thereafter, the secretary of state shall notify the governor of such default, and it shall be the duty of the governor forthwith to convene said board of railroad commissioners, and said board shall proceed at once, with the assistance of the county clerks and assessors of the counties in which such railroad is located, when they shall require such assistance, to ascertain the necessary facts in connection with the location and value of the railroad and rolling stock belonging to such defaulting railroad company, and in the discharge of their duty said board shall have power to summon before them any person as a witness, and to have produced before them the books and papers of such defaulting railroad company, administer oaths and examine any persons summoned before them touching any matter necessary to enable said board to arrive at a just and correct value and description of the railroad track and rolling stock belonging to such railroad company, and shall have power to direct their writs of summons to the sheriff of any county of this state, and it shall be the duty of such sheriff to execute any and all process to him directed by said board, and any person called before said board to testify shall be guilty of perjury if he shall testify falsely, and said board having ascertained in the manner herein indicated the description and value of the railroad track and rolling stock belonging thereto in each county, the secretary of state shall certify the same to the respective county assessors, as provided in sections 5652 and 5653, and said assessors shall proceed at once to list and assess the same as hereinbefore prescribed.

SEC. 5656. Any person, corporation or company operating, owning or constructing a railroad in this state who shall fail to make return of the statement or schedule by this act required to the secretary of state by the first Monday in April, eighteen hundred and eighty-three, and at the same time each year thereafter, such person, company or corporation shall forfeit to the state, as a penalty, not less than one thousand dollars nor more than ten thousand dollars for each offense, to be recovered in any proper form of action, in the name of the State of Arkansas, and paid into the state treasury. Upon failure of any person, company or corporation to make such return at the time by this act required, the secretary of state shall at once notify the attorney-general of such default, and it is hereby made the duty of the attorney-general to institute the necessary legal proceedings to collect said penalty.

SEC. 5657. The secretary of state shall, on or before the first Monday in March in each year, notify each person, company or corporation owning, operating or constructing a railroad in this state, that such statement or schedule is required to be filed by the first Monday in April next ensuing; said notice to be printed or written, and may be served by delivering the same to any agent of such railroad company, or by depositing the same in the post-office addressed to such person, company or corporation at a point where the general office of such railroad company is established, or at any city or town where such railroad company is transacting business and has an office or station.

SEC. 5658. Each person, corporation or company owning or operating a railroad, or any part thereof, in this state shall file the list and schedule in this act prescribed, notwithstanding it may be specified in the charter of any such railroad that such railroad shall be exempt from taxation, or exempt until the happening or accomplishment of any one or more facts.

SEC. 5659. The board of railroad commissioners shall hold their annual meetings herein provided for at the office of the secretary of state, on the first Monday in April in each year, and, if they shall not complete their work on said day, shall meet from day to day until the same shall have been completed. The governor shall have the right to convene said board in special meetings at any time.

ASSESSOR.

SEC. 5660. At the general election in the year 1884, and every second year thereafter, there shall be elected a person in each county in this state as assessor, in the same manner as other county officers are now elected, whose term of office shall continue for two years, or until his successor is duly elected and qualified, who shall, within fifteen days after the receipt of his commission, enter into bond to the State of Arkansas, with good and sufficient security, in a sum of not less than one thousand dollars nor more than eight thousand dollars (the amount to be determined by the county court), conditioned for the faithful discharge of his official duties, which bond shall be approved by the county judge; and said assessor shall be liable on his official bond to the state, county and any school district, city or incorporated town for all damages sustained by the state, county, school district, city or incorporated town by reason of any failure, neglect or refusal to discharge his duties according to law, which damages may be recovered in the same manner as other damages are recovered on other official bonds.

SEC. 5661. Every assessor shall, on or before the first day of January succeeding his election, and before entering upon or discharging any of the duties of his office, take and subscribe to the oath prescribed in section twenty, article nineteen, of the constitution of Arkansas, and, in addition thereto, the following oath or affirmation, which oath shall be indorsed upon the assessment books prior to their delivery to the assessor:

"I, _____, assessor for _____ county, do solemnly swear that the value of all real and personal property, moneys, credits, investments in bonds, stocks, joint stock companies, of which statements may be made to me by persons required by law, will be appraised at its actual cash value; that in no case will I, knowingly, omit to demand of any person or corporation, of whom by

law I may be required to make such demand, a statement of the description and value of personal property, or the amount of moneys and credits, investments in bonds, stocks, joint stock companies or otherwise, which he may be required to list, or in any way connive at any violation or evasion of any of the requirements of the law or laws in relation to the listing or valuation of property, credits, investments in bonds, stocks, joint stock companies or otherwise, of any kind, for taxation."

SEC. 5662. If any person so elected fails or refuses to take the oath required in the preceding section, and file the same with the clerk of the county court of his county, within the time prescribed, the office shall be declared vacant, and the clerk of the county court shall immediately notify the governor, and such vacancy shall be filled in accordance with the constitution and laws of the state (*).

SEC. 5663. The assessor herein provided for shall appraise the real and personal property in his county in such manner and at such times as prescribed by this act, and shall be allowed the following compensation for his services: For each name listed, twenty-five cents, and all the property belonging to one individual or corporation in the county to be counted as one name; for each list of real property, the owner or owners of which are unknown or non-residents, one dollar, and all such lands in one township and range to be embraced or counted as one list; but if any unknown person or non-resident owns lands in more than one township, he shall be allowed one dollar for each township. *Provided*, no fee shall be allowed any assessor for listing any name or personal property, unless said party or property, as the case may be, is in the county and subject to taxation. *Act March 31, 1883, secs. 8-60.*

SEC. 5664. One-half of the compensation of each assessor shall be paid by the state and one-half by the county, and the county court shall draw its warrant on the county treasury for one-half of the amount due to the assessor, and it shall, at the same time, certify to the auditor the amount due to the assessor on the part of the state, the same being one-half of the total amount due to said assessor.

SEC. 5665. Assessors shall receive no other or further compensation for the discharge of the duties required of them than is provided by law. *Act March 3, 1875, secs. 2, 3.*

SEC. 5666. When the amount due the assessor of the county shall be ascertained, the county court shall, in addition to the certificate to the auditor of the amount due the said assessor on the part of the state, also certify the same to the collector of the county; upon receipt of which it shall be the duty of the said collector to pay over to the assessor the amount so certified to be due from the state, out of the funds in his hands belonging to the general revenue of the state, taking duplicate receipts therefor, one of which he shall file with the auditor; and the auditor shall allow the collector credit for the amount so paid in his settlement for the state taxes collected by him. *Act Dec. 14, 1875.*

SEC. 5667. Any assessor who shall deem it necessary to enable him to complete, within the time prescribed by this act, the listing and valuation of the property, moneys and credits of his county, may, with the approval of the judge of the county court, appoint such number of assistants, having the legal

(*) See SEC. 2716 and note.

qualifications, as he shall think necessary in order to enable him to comply with the requirements of this act, and each assistant so appointed shall, within the division assigned him, perform all the duties enjoined upon assessors by law, and each assistant assessor shall swear to the correctness of the assessment and valuation of the property made by him, as the assessor is by this act required to do, and the assessor and his assistants are hereby authorized to administer such oaths as are necessary to a proper discharge of their duties, as prescribed by law.

SEC. 5668. The assessor shall, before the second Monday in January, annually, post up in three or more public places, in each township of his county, written or printed notices that he, at a day therein named, will attend at the usual voting place in said township for the purpose of taking a list of the real and personal property of each resident of said township, and the *per capita* tax of such as are liable to pay the same, and said assessor shall remain at each voting place at least one day, where the voting population is less than seventy-five, and two days where it is seventy-five and not more than one hundred and twenty-five, and three days where it is more than one hundred and twenty-five. And the assessor, upon application, shall furnish each tax-payer an appropriate printed blank upon which to list his property subject to taxation.

SEC. 5669. If any person shall refuse or neglect to attend at a time and place specified in said notices, or shall fail to make out and deliver to said assessor a statement of personal property, moneys and credits, investments in bonds, stocks, joint stock companies or otherwise, or shall refuse or neglect to take and subscribe an oath or affirmation as to the truth of such statement which he is required to verify, and of the value of personal property subject to taxation, said assessor shall, from the best information he can procure, obtain the list of the property subject to taxation belonging to said delinquent in said county, and thereupon visit said delinquents at their places of residence, and require of them the list of real and personal property subject to taxation aforesaid, and if such delinquent resident can not be found, or shall refuse to furnish the desired information, he shall proceed to examine, on oath or affirmation, all persons whom he may suppose to have a knowledge of said taxable property, and shall list and value the same from the best information in his power to obtain.

SEC. 5670. Said assessor shall enter on the list of each delinquent recusant tax-payer aforesaid a charge of one dollar, which shall be entered and run out on the tax-books against said tax-payer, and shall be collected by the tax collector, and one-half of which shall be paid to said assessor in addition to the other fees allowed said assessor, and the balance shall be paid into the school fund of the proper school district of said county. *Provided*, that in case of the sickness of said tax-payer, the same shall be a sufficient excuse for non-attendance at the time and place designated as aforesaid.

SEC. 5671. In all cases in which the assessor is required, in consequence of sickness or absence of the person whose duty it is to make out a statement of personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, or in consequence of his neglect or refusal to make or to be sworn to such statement, to ascertain the several items and the value thereof, the assessor, if he shall be unable to ascertain by positive evidence the several items and value thereof, shall return such articles and the value thereof,

as from general reputation, and his own knowledge of the facts and circumstances, he believes to be a correct list of the articles and the value thereof that such person would be by this act required to list.

SEC. 5672. Each assessor shall, on or before the first Monday of June in each year, make out and deliver to the clerk of the county court of his county, in tabular form and alphabetical order, a list or lists of the names of the several persons, companies or corporations in whose name any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, shall have been listed in his county, and he shall enter separately, in appropriate columns, opposite each name, the aggregate value of the several species of personal property enumerated in section 5620, making separate lists of persons residing out of an incorporated city, town or village and of persons who are residents of an incorporated city, town or village, and shall state the number of the school district in which they reside when he assessed them. The columns shall be accurately added up, and in every case where any person whose duty it is to list any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, for taxation, shall have refused or neglected to list the same when called on for that purpose by the assessor, or to take and subscribe an oath or affirmation in regard to the truth of his statement of personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, when required by the assessor, he shall enter opposite the name of such person, in an appropriate column, "refused to list" or "refused to swear," as the case may be. In every case where any person required to list property for taxation shall have been absent, or unable from sickness to list the same, the assessor shall enter opposite the name of such person, in an appropriate column, the word "absent" or "sick," as the case may be. To which return said assessor, or assistant assessor, shall be required to make oath in the following words, viz.:

I, ———, assessor for the county of ———, and State of Arkansas, do solemnly swear that I have made diligent efforts to ascertain all the taxable property being situate or subject to taxation in said county of ———; that, so far as I have been able to ascertain, the same is correctly set forth and described in the foregoing returns, and that the property therein mentioned is not appraised at less than its true value in money, so help me God.

—————, Assessor.
Sworn to and subscribed before me this ——— day of ———, 18—.

—————, Clerk ——— County.

SEC. 5673. Each assessor shall, at the time he is required to make his return of taxable property to the clerk of the county court, also deliver to him the statements of property which he shall have received from persons required to list the same, arranged by school districts and in alphabetical order, and the clerk of the county court shall carefully preserve the same in his office for four years, and should the records of any county in the state be destroyed by fire or otherwise, after assessments have closed for any year, and before the collection of the taxes, the assessor is hereby authorized to make another assessment as heretofore provided.

SEC. 5674. Each assessor shall, at the time of taking the list of personal property, also take a list of all real property situate in his county that shall have become subject to taxation since the last previous listing of property

therein, with the value thereof estimated agreeably to the requirements of this act, and of all new buildings and structures of any kind over one hundred dollars in value, the value of which shall not have been previously added to or included in the value of the land on which structures have been erected, and shall make return thereof to the clerk of the county court at the same time he is required to make his return of personal property to such clerk. He shall describe the tract or lot of real property on which each of such structures has been erected, the kind of structures and the value thereof, and in the case of destruction by fire, flood, or otherwise, of any building or structures over one hundred dollars in value, which shall have been erected previous to the last valuation of the land upon which the same shall have stood, or the value of which shall have been added to any former valuation of such land, the assessor shall determine, as near as practicable, the value of such structures, and make reduction thereof, and make return of the same to the clerk of the county court as in this section provided, and the assessor shall value all such lots of any town, or addition to any city or town, as may have been laid out in lots since the last appraisement, and make return at the time and in the manner hereinbefore indicated.

SEC. 5675. Each separate parcel of real property shall be valued at its true market value in money, excluding the value of crops growing thereon; but the price at which such real estate would sell at auction, or at a forced sale, shall not be taken as the criterion of such true value. Each tract of land belonging to this state, or to any county, city, town or charitable institution, whether incorporated or unincorporated, and saline, swamp, seminary, school or mineral lands held under a lease exceeding five years, and not exceeding ten years, shall be valued at such price as the assessor believes could be obtained at a private sale for such leasehold estate. Personal property of any description shall be valued at the usual selling price of similar property at the time of listing. If any such property shall have no well fixed or determined value in that locality at the time, then the same shall be appraised at such price as in the opinion of the assessor could be obtained therefor at such time and place (*). Investments in bonds, stocks, joint stock companies or otherwise, shall be valued at their value in money, and the quotations and selling price thereof may be considered in determining their values. Money, whether in possession or on deposit in this state, or out of it, subject to the order or control of such person listing, shall be entered in the statement at the full amount thereof. Every credit for a sum certain, payable either in money, property of any kind, labor or service, shall be assessed according to its true value. If for a specified number or quantity of any article or articles of property, or for a certain amount of labor, or for services of any kind, it shall be assessed according to its true value. Annuities or moneys receivable at a stated period shall be rated at the price which the same may be worth in money. Where the fee of the soil in any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right to any mineral therein in another or others, the same shall be valued and listed agreeably to such ownership, in separate entries, and taxed to the parties owning the same, respectively.

(*) See art. XVI, sec. 5, Const.

When and How to Assess Real Estate.

SEC. 5676. Each assessor, on or before the first Monday in June, in the year eighteen hundred and eighty-three, and every second year thereafter, shall make out and deliver to the clerk of the county court a return in tabular form, contained in a book to be furnished him by such clerk of the county court, of the amount, description and value of the real property subject to be listed for taxation in his county, and the amount and description of all lands belonging to the United States and to the State of Arkansas; also of all other lots, parcels or tracts of land exempt from taxation, which returns shall contain:

First. The names of the several persons, companies or corporations in whose names the several tracts of real property, other than property situate in incorporated cities and towns, in each congressional township within his county, shall have been listed, and in appropriate columns, opposite each name, the description of each tract by section, or the largest subdivision of which the same is capable, designating the number of the section and the part thereof, and the congressional township or survey, and the value of each tract determined by the assessor, lands belonging to the United States or to this state not to be valued.

Second. The names of the several persons, companies or corporations in whose names the several lots of real property in each town or city in his county shall have been listed, and in appropriate columns, opposite each name, the description of each lot and value as determined by the assessor, and such description shall designate the town or city, the number of lots and parts thereof; and, if part of a lot is listed, it shall state the number of feet along the principal street on which it abuts. If the name of the owner of any tract of land or lot shall be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot. In making such return, each separate tract of land in each congressional township shall be placed according to the numerical order of the section, and each town or city lot according to the numerical order of lots and blocks, which returns shall be as near the following form as practicable:

Names of Owners.	Part of Section.	Section.	Township.	Range.	No. of Acres.	Value.	No. of School District.	No. of Acres U. S. Land.	No. of Acres State Land.	No. of Acres otherwise exempt.	Value.
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With the following affidavit:

I, _____, assessor, do solemnly swear that the foregoing is correct, and that I have appraised each tract or lot of land, except United States or state lands, at its true value in money, and not at what it would bring at auction or at a forced sale, so help me God.

Sworn to and subscribed before me this _____ day of _____, 18—. _____, Assessor.
 _____, Clerk.

SEC. 5677. It shall be the duty of each assessor to make out, from such sources of information as shall be in his power, a correct and pertinent description of each tract or lot of real property in his county, so that the same can be identified and distinguished from any other tracts or parts of tracts, and he shall place a value on each subdivision of a block and the improvements thereon in cities and towns, or additions thereto, notwithstanding the fact that one individual owns the whole block. And when he shall deem it necessary to obtain an accurate description of any separate tract or lot in his county, he may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession, and, if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish a satisfactory description of such parcel of real property to such assessor, he may employ the county surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein, and the expense of such survey shall be returned by such assessor to the clerk of the county court, who shall add the expense of such survey to the tax assessed upon such real property, and it shall be collected by the collector of the county with such tax, and, when collected, shall be paid on demand to the person to whom the same is due; and the assessor shall, in all cases, from actual view, or from the best sources of information within his reach, determine as near as practicable the true value of each separate tract and lot of real property in his county, according to the rules prescribed by this act for valuing property, and he shall note in his plat-book, separately, the value of all houses, mills and other buildings, which shall be carried out as a part of the value of such tracts.

SEC. 5678. For the purpose of enabling the assessor to determine the value of buildings and other improvements, he is hereby authorized to enter, with the consent of the owner or occupants thereof, and fully to examine all buildings and structures of whatsoever kind which are not by law expressly exempt from taxation; otherwise he shall determine the value by such information as he can obtain.

SEC. 5679. The assessor, at the time of making the assessment of real property subject to taxation, shall enter in a separate list pertinent descriptions of all burying grounds, public school-houses, houses used exclusively for public worship, and institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which said house or institution or public building is situated, and which are by law exempt from taxation, and the value thereof. If such property is held and used for other public purposes, he shall state by whom or how it is held.

SEC. 5680. If demanded, the assessor shall deliver to the owner of any personal property assessed for taxation a copy of such assessment, and any person listing real estate for assessment may present to the assessor a written description of the same, and the assessor, after having entered the same upon the assessment list, shall return the same to him, with a certificate verifying the same as the assessment list furnished by such person for the assessment of that year.

SEC. 5681. Whenever any person shall ascertain that an error has been made in the description of his lands, either by the assessor in listing the same.

or by the clerk in making out the tax-books, he may present such certified description to the clerk of the county court, who shall correct the error in accordance therewith, on the margin of the assessment list in his office, and certify such amendment to the collector of his county, who shall make a like amendment on the tax-book.

SEC. 5682. For the purposes of this act the terms town or city, and towns and cities, shall apply to all cities or towns, incorporated or not incorporated; also, to all blocks or lots, or parts thereof, assessed for taxation as such, whether the same are situated in an incorporated city or town or not.

SEC. 5683. Each assessor shall, at the time of taking a list of the personal property in his county, ascertain and set down in a table prepared for that purpose the number of acres of improved land and the number of acres of unimproved land in each farm in his county; the number of acres sown in wheat, then on the ground; the number of acres and number of bushels, each, of corn, wheat, peas, potatoes, oats and barley raised during the preceding year; the number of acres and number of tons of hay cut the preceding year; the number of acres and number of pounds of seed cotton grown the preceding year; the number of pounds of wool and number of sheep sheared the preceding year; the number of acres in apple trees, and the number of acres in peach trees, and the number of bushels of apples and peaches sold during the preceding year, and the number of bushels of small fruits, including plums, cherries and berries, and the number of pounds of grapes sold the preceding year, and the said tabulated statement shall be by said assessor made out by townships and in duplicate, and one copy forwarded to the secretary of state on or before the first day of July next thereafter, and the other filed with the county clerk of the proper county; said assessor shall officially certify to the correctness of such tabular statements, and shall be entitled to a fee of five cents for each farm enumerated.

SEC. 5684. The secretary of state shall cause an abstract of the information contained in such tabular statements to be printed in pamphlet form so soon after receiving the same from the assessor as practicable, showing in said abstract the number of acres of improved land and the number of acres of unimproved land in farms, the number of acres and the product of each crop per hundred acres of improved land for each county.

SEC. 5685. Any assessor willfully neglecting or refusing to comply with the requirements of section 5683, or any party refusing to give the necessary information, shall be guilty of a misdemeanor, and, upon conviction, punished accordingly; and in case any assessor shall fail to make return of such tabular statements to the secretary of state by the first day of July in each year, it shall be the duty of the secretary of state to immediately notify the proper prosecuting attorney of such default of said assessor, and such prosecuting attorney is required to lay the same before the proper grand jury.

SEC. 5686. The secretary of state shall, as soon as practicable after the passage of this act, cause to be printed a sufficient number of copies of sections 5683, 5684 and 5685 to supply each assessor and each of his deputies with a copy thereof; also, prepare and cause to be printed a sufficient number of blanks suitable for carrying out the provisions of section 5683; and the secretary of state shall transmit such copies and blanks to the county clerks of the respective counties, who shall deliver the same to the assessors.

COUNTY BOARD OF EQUALIZATION.

SEC. 5687. The board of equalization of each county shall be composed as follows: Three intelligent citizens, real estate owners and qualified electors of such county, to be appointed by the governor on or before the first day of April, eighteen hundred and eighty-three, and every two years thereafter; the said three citizens shall be selected from different portions of the county, and shall hold their office for two years. Said board shall meet in each county on the first Monday in June of each year, and organize by electing one of their number president. The clerk of the county court shall be clerk of said board. Each member of said board shall, before entering upon the discharge of his duties, take the oath of office prescribed in section twenty, article nineteen, of the constitution of Arkansas. *Provided*, that any party aggrieved by any action of the board of equalization may appeal therefrom to the county court.

SEC. 5688. Members of such boards of equalization shall receive the sum of three dollars per day for each day engaged in the discharge of their duties, as prescribed in this act. *Provided*, said board shall not be in session longer than two weeks in any one year.

Equalization of Personal Property.

SEC. 5689. There shall be in the year eighteen hundred and eighty-three, and annually thereafter, a session of the county board of equalization for the purpose of equalizing the assessment of personal property, moneys and credits in each county. Said session shall be held at the clerk's office in each county on the first Monday in June of each year. Said board, when in session, shall have power to hear complaint and to equalize by adding to or taking from the valuation of all personal property, moneys and credits within the county; and if during the time of collecting taxes upon the property so equalized any obvious errors be discovered in the assessment of any personal property, or if the board of equalization shall have valued any property excessively, the owner of such property so assessed or equalized may, by application to the county court, by proper showing, at any time before the collector closes his books, have the same adjusted. It shall be the duty of the assessor to attend on the meetings of said board and explain his assessment to said board when requested.

SEC. 5690. In the equalization of personal property the county board may add to or take from the valuation of the personal property, moneys or credits of any person returned by the assessor, or which may have been omitted by him, or add other items to it upon such evidence as is satisfactory, whether such return is made upon oath of such person or upon the valuation of the assessor. In the equalization of real property not previously entered for taxation on the tax-books as then listed, it shall raise the valuation of such tracts and lots of real property as in the opinion of the county board has been returned below their true value in money to such price or sum as it may find to be the true value thereof, agreeably to the rules prescribed by this act for the valuation of real property, or may reduce the valuation of such tracts or lots as in the opinion of the board have been returned above their true value, as compared with the average valuation of the real property of such

county, having due regard to their relative situation, quality of soil, improvement and natural and artificial advantages possessed by each tract or lot. For the purpose of this equalization said board, or any member thereof, shall have free access to the county records of the county, and it is made their duty to carefully examine said records in making their investigations for the purpose of equalizing the said assessment.

SEC. 5691. The clerk of the county court shall keep an accurate journal or record of the proceedings of said board. In case a vacancy should occur in said board, the governor shall fill the same by appointment.

Real Estate.

SEC. 5692. The county board of equalization shall meet on the first Monday in June, in the year eighteen hundred and eighty-three, and every second year thereafter, at the office of the clerk of the county court, and each member of said board shall take an oath to fearlessly, impartially and faithfully equalize the value of the property assessed.

SEC. 5693. The clerk shall lay before said board the returns of the real property made by the assessor, and said board shall immediately proceed to equalize the valuation of such real property, so that each tract or lot shall be entered upon the tax-books at its true value in money, and for this purpose shall observe the following rules:

First. It shall raise the valuation of such tracts and lots of real property as in the opinion of the board have been returned below their true value to such price or sum as may be deemed to be the true value thereof, agreeably to the requirements of this act in regard to the valuation of real property. Said board may actually enter upon and view property when they are not fully satisfied of its true value.

Second. It may reduce the valuation of such tracts or lots as in the opinion of the board have been returned above their true value, as compared with the average valuation of the real property of such county, having due regard to the relative situation, quality of soil, improvements and natural and artificial advantages.

Third. The clerk of the county court shall receive the sum of three dollars per day for each day said board remains in session.

DUTIES OF CLERKS OF COUNTY COURTS.

SEC. 5694. The clerk of the county court of each county shall, on or before the first Monday in February, eighteen hundred and eighty-three, and at the same time every second year thereafter, make out and deliver to the assessor of each county an abstract containing a description of each tract of land situate in his county, with the name of the owner, if known, and the number of acres or quantity of land contained therein, as the same shall appear from the books of his office, and he shall commence the same in the lowest number of township and range in his county, and in the north-east corner of each township, and shall proceed numerically with all the sections, townships and ranges in his county, first setting down all the subdivisions of each section as they belong to different individuals, or the whole section together, if

owned by one person and not divided on account of parcels being of different value.

SEC. 5695. Lands of the United States or of the state, or lands otherwise exempt from taxation, shall be entered upon such abstract in the name of the owner. In case of real estate situate in any city or town, such clerk of the county shall proceed according to the plan or plat thereof, commencing with the lowest number of the block and lot or other subdivision, and proceed numerically with all the lots in a block, and all the blocks in a city or town, until completed, but no failure to observe any of these requirements shall be held to vitiate any assessment if the land be so described as to be identified.

SEC. 5696. To facilitate the assessment and collection of taxes, the county court of each county shall, if not already done, procure and keep a land book or books of maps of all the townships or fractional townships in the county, which book shall be well bound, and shall be deposited in the office of the clerk of the county court, and shall also procure a list of the lands owned by the United States and by this state in their respective counties. No allowance shall be made to the clerk of the county court for making such abstract, unless such abstract embraces every acre of land situate in his county as shown by the maps of the townships in his county, if there be such.

When to Abstract Real Property to the Auditor.

SEC. 5697. The clerks of the county courts shall, on or before the second Monday in August, eighteen hundred and eighty-three, and every second year thereafter, make out and transmit to the auditor of state an abstract of the real property in each township in his county, in which he shall set forth:

First. The number of acres exclusive of town or city lots returned by the assessor of his county, with such addition as may have been made thereto.

Second. The aggregate value of such real property, other than town or city lots, as returned by the assessor of his county, inclusive of such additions as shall have been made thereto.

Third. The number and value of all city and town lots. *Ib.*, *secs.* 61–86.

Tax-Books and Extension of Taxes.

SEC. 5698. The clerk of the county court shall make out in books prepared for that purpose, in such manner as the auditor of state shall prescribe, a complete list or schedule of all the taxable property in his county, and the value thereof, as equalized, and arranged in the following form:

Each separate tract of real property in each congressional township in his county, other than town or city property, shall be contained in a line, or lines, opposite the names of owner or owners, arranged in numerical order.

Each separate lot or tract of real property in each city or town shall be set down in a line, or lines, opposite the names of the owner or owners, arranged in numerical order.

The aggregate value of personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, of each person, company or corporation, within each congressional township, shall be placed in a column opposite the name of the owner, person, company or corporation, in whose name

the same is listed; the names of the persons in each school district who are not residents of any incorporated town, city or village shall be placed in alphabetical order in one list, and the names of the persons who are residents of any incorporated town, village or city shall be entered in another list in alphabetical order.

SEC. 5699. The clerk of the county court shall, after receiving statements of the rates and sums of money to be levied for the current year from the auditor of state, and from such other officers and authorities as shall be legally empowered to determine the rates or amount of taxes to be levied for the various purposes authorized by law, forthwith determine the sums to be levied upon each tract or lot of real property in his county, adding the taxes of any previous year or years that may have been omitted, and upon the amount of personal property, moneys and credits listed in his county in the name of each person, company or corporation, which shall be assessed equally on all real and personal property subject to such taxes.

SEC. 5700. It shall be the duty of the county clerk to add each tax-book delivered to the collector, making the separate columns of values when added together amount to the sum of the column of total values when added up; and at the end of the tax-book to recapitulate the additions of each page, so as to make the same prove itself to be correct, according to the form to be furnished by the auditor.

SEC. 5701. In all cases where any clerk of the county court, by inadvertence or mistake, shall have in any year omitted or shall hereafter omit to enter on the books of his county any lands or lots, or parts of lots, situate in his county subject to taxation, it shall be his duty to enter the same on the tax-books of the next succeeding year, and to add to the taxes of the current year the simple taxes of each and every preceding year in which such lands or lots shall have so escaped taxation.

SEC. 5702. When for any cause the taxes in any county, for any year, shall not be collected, the same shall be charged on the tax-books for the next year and collected by the same officers and in the same manner as the taxes of that year.

SEC. 5703. In all cases where practicable, and the land is owned by one person, or one or more persons jointly, description of lands, both on the tax-books and delinquent lists, shall be in tracts not less than one hundred and sixty acres.

SEC. 5704. The clerk of the county court shall mark opposite every tract, town or city lot that may have been heretofore forfeited to the state for the non-payment of taxes the word "forfeited," and on such tract, town or city lot there shall not be charged any taxes unless the commissioner of state lands shall officially advise such clerk of the county court that the same is or has become subject to taxation, and in that event the same taxes shall be charged and collected thereon as are or may be allowed by law. The several assessors in the several counties shall assess all the lands or lots, or parts thereof, that may appear on the plats or lists furnished them, and if any clerk of the county court shall have lost, or if the records of his office shall not contain, a list of the lands forfeited to the state within his county, he shall certify that fact to the commissioner of state lands, and said commissioner of state lands shall forthwith furnish said clerk with such list.

SEC. 5705. The clerk of the county court of each county shall, on or before

the first Monday in November in each year, make out and deliver the tax-books of his county to the collector, with his (*) warrant thereunto attached, under his hand and the seal of his office, authorizing said collector to collect such taxes. The collector shall give duplicate receipts for the tax-books, in which the amount of the different taxes shall be separately stated, and the county clerk shall forward one of said receipts to the auditor of state.

SEC. 5706. The tax-books delivered to the collector shall be a public record, and at the expiration of his term of office they shall be delivered to and deposited in the office of the county clerk, there to be preserved as other records of the county.

SEC. 5707. The clerk of the county court shall make out and transmit to the auditor of state on or before the first Monday in September, annually, a statement of the aggregate value of the taxable property in his county, and of the total amount of taxes for all purposes assessed thereon for that year, and at the same time he shall make out and transmit to the auditor of state an abstract of the number and value of each of the enumerated articles, the value of merchandise and of manufacturing stock, and the value of other personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and the value of all other personal property, as returned by the assessor, or as fixed by the county board of equalization. Such abstract shall be made out in such form as the auditor shall prescribe.

SEC. 5708. If any person required to list property for taxation shall have been prevented by sickness or absence from giving to the assessor the list of such property, as by this act prescribed, such person, or his agent having charge of such property, may, at any time before the making out of the tax-books by the clerk of the county court, make out and deliver to the assessor of the county a statement of the same, as required by this act, and the assessor shall in such case make an entry thereof in the returns of the proper city, town, ward or school district, and correct the item or items in said return made by him, as the case may require, but no such statement shall be received by the assessor from any person who shall have refused or neglected to make oath to his statement when required by the assessor under the provisions of this act, nor from any person unless he shall have first made and filed with the clerk of the county court an affidavit that the person required to list the same was absent from his county without design to avoid listing his property, or was prevented by sickness from giving to the assessor the required statement when called upon for that purpose.

(*) Collector's warrant may be in the following form :

THE STATE OF ARKANSAS,

To the collector of ——— county, Greeting :

You are hereby authorized and commanded to collect of the several persons named in the annexed tax-book of ——— county, for the year 18—, the *per capita* tax, and the tax on lands, personal property, money and credits wherewith each stands assessed ; and if, after the time allowed by law for the payment of such taxes, any shall remain unpaid, then you are commanded to levy and make such unpaid *per capita* tax, and tax on personal property, money and credits, with costs, out of the goods and chattels of the persons charged therewith, and the taxes unpaid on real property out of such real property, in the manner and within the time required by law.

And you are further commanded to account and pay to the proper officers the amounts by you collected, in the manner and within the time required by law.

In testimony whereof, I, ———, clerk of the circuit court and *ex officio* clerk of the county court of ——— county, have hereto set my hand and the seal of said court this, the ——— day of ———, 18—.

—————, Clerk.

See *Sanders v. Simmons*, 30—277.

SEC. 5709. The clerk of the county court shall, from time to time, correct any errors which he may discover in the names of the owners, in the description or quantity of any tract or lot contained in the list of real property in his county, but in no case shall he make any reduction in the valuation of any tract or lot of real property, except such as shall have been ordered by the county board of equalization in conformity with the provisions of this act.

AUDITOR'S DUTY.

SEC. 5710. The auditor of state shall, from time to time, prepare and transmit to the several clerks of the county courts such assessors' blanks, blank-books and instructions as shall by law be necessary to carry into effect the provisions of this act. The expense of procuring such assessors' blanks and blank-books as are required by the provisions of this act shall be paid out of the state treasury upon the warrant of the auditor.

SEC. 5711. The auditor shall, on or before the first Monday in July, annually, give notice to such clerks of the county courts of the rates per centum required by the general assembly to be levied for the payment of principal and interest of the public debt, for the support of common schools, for defraying the expenses of the state government, and for such other purposes as shall be prescribed by law, which rates or per centum shall be by the county clerks levied upon the taxable property contained in the tax-books of their respective counties.

LIEN FOR TAXES—WHEN ATTACHES.

SEC. 5712. Taxes assessed upon real or personal property shall bind the same and be entitled to preferences over all judgments, executions, incumbrances or liens whensoever created, and all taxes assessed shall be a lien upon and bind the property assessed from the first Monday in February of the year in which the assessment shall be made, and shall continue until such taxes, with any penalty that may accrue thereon, shall be paid. *Provided*, that as between grantor and grantee said lien shall not attach until the first Monday in July in each year (**).

SEC. 5713. No property shall be exempt from sale or distress for taxes due thereon.

SEC. 5714. It shall not be necessary to the validity of an assessment or of a sale of land for taxes that it be assessed to its true owner, but the taxes shall be a charge upon the real and personal property taxed, and, when sold, shall vest the title in the purchaser without regard to who owned the land or other property when assessed or when sold, and the personal property of any deceased person shall be liable in the hands of any executor or administrator for any tax due on the same by any testator or intestate.

COLLECTOR.

SEC. 5715. The sheriff of each county shall be *ex officio* collector of all taxes of his county until otherwise provided (†), and, after giving bond, as

(**) See *Crowell v. Packard*, 35—348.

(†) See *Falconer v. Shores*, 37—386.

hereinafter prescribed in this act, and upon receiving the tax-books of his county, he shall proceed to collect the same according to law.

SEC. 5716. Each collector may appoint one or more deputies to assist him in the collection of taxes, and shall take such bond and security from the person appointed as he deems necessary for his indemnity, and shall in all cases be liable for the proceedings and misconduct of his deputies.

SEC. 5717. Each sheriff, before entering upon his duties as collector of taxes, shall give bond and security (dd) to the state, which bond shall be in duplicate and approved by the county court (e), but any person may, when he deems the security on said bond insufficient, appeal to the circuit court of the proper county, if in session, if not, to the circuit judge, in vacation, from the order of the county court approving such bond, and if, upon such appeal, the court or judge finds the bond to be sufficient, such court or judge shall approve it; but if, upon said appeal, it is found to be insufficient, the court or judge shall order a new bond or additional security to be given, as may be deemed proper and right, and the same shall be subject to approval of said circuit judge or court.

SEC. 5718. Said collector's bond shall be conditioned for the faithful performance of the duties of his office, and for well and truly accounting for and paying over all moneys collected by him by virtue of his office; and his term of office as collector shall not expire until his successor is qualified.

SEC. 5719. The bond of collector shall be approved as prescribed in this act, and shall be in double the amount of the aggregate taxes to be collected by such collector, one copy of which shall be forwarded by the clerk of the county court to the auditor of state, the other filed with the recorder of the county, to be by him recorded.

SEC. 5720. If the sheriff of any county should fail to give the collector's bond as herein provided before the first Monday in November of each year, the clerk of the county court shall immediately notify the governor, and some competent person, having the requisite qualifications, shall be appointed by the governor to perform the duties of collector, and the person so appointed shall in all things comply with the provisions of the law regulating and governing collectors, and, when so appointed, full faith and credit shall be given to all his acts as such (ee). *Ib.*, secs. 87-105.

SEC. 5721. The person so appointed collector of revenue of such county shall qualify and give the bond required by law within ten days after he is notified of his appointment. If he should fail to give such bond, the governor shall appoint some other person.

SEC. 5722. The person so appointed and qualifying, and giving such bond, shall possess all the powers and be subject to the provisions of law in regard to the duties of the office of collector of revenue as apply to other cases. He shall hold the office until the next general election, and until his successor is elected and qualified. *Act Feb. 25, 1875, secs. 1 and 2.*

SEC. 5723. In the event of the death, removal or disability of the person appointed under the preceding sections to perform the duties of collector, the clerk of the county court shall immediately inform the governor, who shall

(dd) See SECS. 4776, 4777.

(e) See *Bosely v. Woodruff County Court*, 28-306.

(ee) See *Falconer v. Shores*, 37-386; *Alston v. Falconer*, 42-114; *Elsay v. Falconer*, *Ib.*, 117.

appoint some competent person having the requisite qualifications under the constitution and laws of this state, who shall in all things comply with the provisions of the law regulating and governing collectors, and, when so appointed, full faith and credit shall be given to his acts as such. *Act March 31, 1883, sec. 106.*

SEC. 5724. In case of vacancy in the office of collector from any cause, except as mentioned in sections 5720 and 5723, if such vacancy should occur more than six months before the next general election, such vacancy shall be filled by special election, and if such vacancy shall occur less than six months before the next general election, such vacancy shall be filled by appointment by the governor. The person so elected or appointed shall qualify within fifteen days after notice of his election or appointment.

SEC. 5725. In case of failure of the sheriff to give bond, as provided in section 5720, or in case of vacancy, as provided in section 5724, it shall be the duty of the clerk of the county court immediately to notify the governor of such failure or vacancy, as the case may be, affixing to such notice his certificate and seal of office.

SEC. 5726. The governor may, by proclamation, extend the time "when the penalty shall attach for making distraint returning delinquent list, advertising and selling delinquent lands, making settlement and paying over the revenue, and for the performance of any other duty by the collectors," so that the tax-payer may have the same time to pay the taxes, and the collector have the same time to perform the duties of his office, as allowed by law in case such failure or vacancy had not occurred. The governor shall, in such proclamation, fix the time for the performance of the acts mentioned in this section; a copy thereof shall be filed in the office of the clerk of the county court, and recorded in the records of such court by the clerk. Such proclamation shall be published in some newspaper in such county for two weeks, if one be published therein, and all acts and duties performed in the time fixed in such proclamation shall be as valid and binding as if performed in the time fixed by the general law. *Act Feb. 25, 1875, secs. 3-5.*

SEC. 5727. Whenever any collector dies after he has received the tax-books for any year, and before he has collected the taxes charged therein, his legal representative shall hand over at once to his successor, as soon as he is appointed and qualified, the tax-books, and pay over at once all moneys, less his commission, which have been collected by the deceased collector from all sources, and then in his hands.

SEC. 5728. The new collector shall execute receipts in triplicate, to be attested by the clerk of the county court, for the tax-books so delivered, and showing the amount already collected upon the same, and the amount uncollected; also receipts in triplicate for the amount of taxes collected by the deceased collector from all sources, and paid over to him by the executor or administrator, one of each of which receipts shall be certified by the clerk to the auditor of state, who shall thereupon charge the new collector with the balance of the state taxes due on the tax-book, and the amount paid over to him by the executor or administrator of the deceased collector; and another shall be filed with the county clerk, who shall thereupon charge the new collector with the balance of taxes due on the tax-books, and with the amount

paid over by such executor or administrator, and the third shall be given to the executor or administrator of the deceased collector.

SEC. 5729. Any collector who shall resign, or be removed or disqualified, shall pay over all moneys which may be in his hands due the state, county, city or town, or school district, to his successor in office, and take duplicate receipts therefor, one of which receipts shall be filed with the clerk of the county court, and the other retained by the collector, and the county clerk shall certify to the auditor of state the amount of such receipt, and it shall be the duty of the collector charged therewith to pay the same into the treasury in the same manner and at the same time as regular revenues are to be paid.

SEC. 5730. In the receipts mentioned in section 5729, it shall be specified particularly on what account the moneys mentioned were received, whether from taxes or from other sources. *Act March 31, 1883, secs. 107-110.*

Notice of Collection of Taxes.

SEC. 5731. The collector shall cause printed notices to be posted in three public places in each township, town or city throughout the county, one of which shall be at the place of holding elections in such township, town or city, and published in some newspaper published in the county, if any there be, stating on what day the collector or his deputy will attend at the place of holding elections, in each township, town or city, which day shall not be prior to the first Monday in November of each year, but as soon thereafter as practicable, for the purpose of receiving taxes. The collector or his deputy shall attend, for the purpose aforesaid, on the day and at the place named in such notice, and thereafter shall attend at his office at the county seat until the tenth day of February of each year, to receive taxes from persons wishing to pay the same (f).

Funds Receivable for Taxes.

SEC. 5732. The tax levied to pay the interest on the public debt shall be collected in United States currency and paid into the state treasury in the currency collected.

SEC. 5733. The collector shall receive county warrants in payment of county taxes (ff); the orders or warrants that may be payable on presentation of any town, city or school district for their respective taxes, and the state treasurer's certificates of indebtedness, of date not prior to July 23, 1868, for state taxes, levied to defray the general expenses of the state (g). *Provided*, that this section shall not be so construed as to compel the acceptance of any order or warrant that by the laws of this state was required to be funded.

SEC. 5734. The collector of revenue shall pay into the state and county treasury, in kind, all money collected by him, whether specie, United States paper currency, national bank notes, silver or gold certificates, warrants or scrip, as authorized by law to be received, and every collector or other officer who shall fail to comply with the provisions of this section shall be fined one hundred dollars for each violation, and be held liable on his official bond for the

(f) See *Cossart v. Spence*, 23—374; *Hare v. Carnall*, 39—196.

(ff) See *Daniel v. Askeu*, 36—487.

(g) See *English v. Oliver*, 28—317.

difference in value between the funds received and those paid, and shall not be eligible to hold any office of trust in this state (gg).

SEC. 5735. Any collector of any county, city or town in this state who shall return any person, personal property or real estate delinquent, by whom or upon which taxes have been paid, or shall advertise for sale, offer to sell or sell any property, real or personal, upon which the taxes have been paid for the year for which the same shall be returned delinquent, advertised, offered for sale or sold, shall forfeit and pay to the owner of such property, or any other person interested therein, or who may be injured thereby, a sum equal to double the taxes, penalty and costs charged on said personal property or land, together with such actual damages as may have been sustained, and for any sum so recovered such officer and his sureties shall be liable on his official bond. *Act March 31, 1883, secs. 111-114.*

SEC. 5736. No collector nor deputy collector shall, either directly or indirectly, contract for or purchase any orders or warrants issued by the county of which he is collector, or any state warrants, or town orders, or the orders or warrants of any city, town or other body politic for which he is the collector of taxes, at any discount whatever upon the sum due on such orders or warrants; and, if any collector or deputy collector, directly or indirectly, contracts for, purchases or procures any such orders or warrants at any discount whatever upon the sum for which the same are respectively issued, he shall not be allowed, on settlement, the amount of said warrants or orders, or any part thereof, and shall also forfeit the whole amount due on such warrants or orders and the sum of one hundred dollars for each and every breach of the provisions of this section, to be recovered in a civil action at the suit of the state for the use of the county; and the treasurer of state, and every person or officer to whom the county collector of any county is required to return the state, county, city, town, village, school or road tax, is hereby prohibited from receiving from any collector any warrants, orders or bonds in payment of taxes collected by him or his deputies, unless with said warrants, orders, or bonds, said collector shall file his affidavit with the treasurer of state, or the person or officer entitled to receive said tax, stating therein that all such warrants, orders and bonds were received at their par value, and that he has faithfully performed his duties, as prescribed in this act; and whoever swears falsely in such affidavit shall be guilty of perjury, and, upon conviction, shall be imprisoned in the penitentiary for not less than one nor more than three years. *Act March 21, 1869, sec. 2.*

Tax Receipts.

SEC. 5737. The collector, whenever any taxes are paid, shall give the person paying the same a receipt therefor, dated, numbered and filled up, so as to show by whom, on what, and amount of taxes paid, amount of land and personalty, rate per centum, at the foot of the receipts, which receipt shall be prepared for the purpose, and, in case of land, distinctly specifying it as it is described on the tax-books, and such receipt may be in the following form, viz.:

(gg) See *Askew v. Columbia County*, 32-270.

TAX RECEIPT FOR 188..

[illegible]

Total valuation of real property as valued on tax-books.....

Value of personal property as per tax-books.....

Total valuation of real and personal property taxed..... \$

	DOLLARS.	CTS.	
State Tax, $\frac{1}{2}$ mill. S. S.			
Sinking Fund Tax, 4 mills, cur.			
General School Tax, 2 mills, S. S.			
Asylum, $\frac{1}{2}$ mill. S. S.			
County General Tax, ... mills, C. S.			
Co. Debt Tax, ... mills, O. C. S. or cur.			
Distriet School Tax, S. S.			
Corporation Tax, cur.			
Assessors' penalty, S. S.			
Poll Tax, S. S.			
Total Tax			

REMARKS.—The holder of this receipt is requested to examine it thoroughly, and, should there be a mistake in it, return it immediately for correction.

COLLECTOR'S OFFICE,

§...

..... County, Arkansas, ..., 188..

Received of Dollars

Taxes for the year 188.. upon the property herein described, as charged upon the tax-books.

Sheriff and *Ex Officio* Collector of Taxes for County, Arkansas.

SEC. 5738. The auditor of state shall prepare, and, by the first Monday in November in each year, furnish to the collectors of the respective counties a sufficient number of blank forms, contained in a well-bound book, for the record of tax receipts, to be issued by such collectors, and said blanks may be in the following form:

meanor, and, upon conviction, fined in any sum not more than five hundred dollars, and be removed from office.

SEC. 5744. The expense of printing and binding said book shall be paid for out of the state treasury.

SEC. 5745. The book of record of tax receipts by sections 5738, 5739, 5740, 5741 and 5742 required to be kept by the collectors of the respective counties of this state, whether filled up or not, shall, at the time of making his final settlement with the county clerk, as in this act prescribed, be delivered by the collector to the clerk of the county court, which shall be received and receipted for by such clerk, and by him preserved as a public record of his office, and said book shall become a public record of such county, and shall be evidence that the taxes have been paid by the respective persons upon the property and at the times as therein specified and entered.

Collection by Distraint.

SEC. 5746. At any time after the tenth day of February, in each year, after such tax may be due, the collector shall distraint sufficient goods and chattels belonging to the person charged with taxes levied upon personal property to pay the taxes due upon the personal property of said person, and a penalty of twenty-five per centum thereon (which penalty shall be collected by the collector and paid into the county school fund), and the cost that may accrue, and shall immediately proceed to advertise the same in three public places in the county, stating the time when, and the place where, such property will be sold. If the taxes for which such property is distrained, and costs which shall accrue thereon, are not paid before the day appointed for sale, which shall not be less than ten days after taking such property, the collector shall proceed to sell the same at public vendue, or so much thereof as will be sufficient to pay said taxes and the cost of such distress and sale. *Provided*, that he shall not distraint any goods and chattels for taxes levied on real property, except as provided in section 5587.

SEC. 5747. If the tax upon personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, of any person, association or corporation, shall remain unpaid after the tenth day of February in any year, and the collector shall be unable to find any personal property of such person, association or corporation whereon to levy to make the taxes then due, he shall present such account for taxes to any person who may be indebted to such person, association or corporation, and demand the payment thereof, and the person to whom the same shall be presented shall pay over to the collector the amount of such taxes, if so much he owe, and take the collector's receipt therefor, which shall be deemed and taken in all courts of this state a payment on his indebtedness to the full amount expressed on the collector's receipt. If such person should fail or refuse, on demand, to pay over the amount of such tax, if so much he owe, to the collector, said collector shall file a statement of the amount of such tax with the person so refusing, which shall operate as a garnishment upon the person so served, and the collector shall thereupon proceed to collect such taxes in the manner fixed by law in cases of garnishment. *Provided*, that no person shall be compelled to pay any debt before the same may be due, nor a greater

amount than he may be owing such person, corporation or association. The cost of garnishment shall be paid by the party refusing to pay such taxes when so requested.

SEC. 5748. The collector shall be allowed the same fees for making distress and sale of goods and chattels for the payment of taxes which are now or may hereafter be allowed by law to sheriffs for making levy and sale of property on execution, traveling fees to be computed upon the actual distance necessarily traveled in each instance from point to point, without regard to the distance from the county seat, and the collector is hereby authorized and empowered to levy on and sell the goods and chattels of the person liable for taxes herein provided, in the same manner and under the same restrictions as goods and chattels are required to be levied and sold under execution on judgment at law, when not inconsistent with the provisions of this act. *Provided*, that no goods and chattels of any person shall be exempt from such levy and sale.

SEC. 5749. Said collector shall be allowed commission for collecting the revenue as follows: For the first ten thousand dollars collected, five per cent. in kind; for all sums over ten thousand dollars and under twenty thousand dollars collected, three per cent. in kind; for all sums over twenty thousand dollars collected, two per cent. in kind.

SEC. 5750. Whenever any collector shall have reason to believe that any person charged with taxes (other than those upon real estate) is about to remove from the county without paying his taxes, he may at any time levy and collect such taxes, with costs, by distress and sale.

Delinquent List of Personal Property, etc.

SEC. 5751. The collector shall, within seventy days after the tenth day of February, in each year, make out and furnish to the county clerk a report of all delinquent and insolvent tax-payers in his county, with the amount due from each, which report shall be verified by the written affidavits of the collector, to the effect that he has in person, or by his deputy, made a legal demand for taxes of all delinquent tax-payers found in his county, by going to their places of abode or business and searching for something to seize and sell for taxes; that the tax-payers mentioned in said report have failed to pay their taxes and have no effects known to him which can be made to pay the same, and that he has made diligent inquiry after such of said delinquents as have not been found, and that he has been unable to find them in his county, and that they have no effects known to him which can be made to pay their taxes. Separate lists of such delinquents shall be made for each school district and for each city or town.

SEC. 5752. The county court shall proceed to examine such report so made as aforesaid, and shall allow to the collector a credit for such of the taxes so reported insolvent or delinquent, as satisfactorily appears to said court to remain uncollected without default of the collector, and no more; and a list of such allowance shall be made out by the county clerk and certified and transmitted to the auditor of state within ten days after the same is approved by the county court or county judge, and the same shall be credited to the collector in his settlement with the auditor of state and with the county clerk.

SEC. 5753. In the event the county court shall not meet at the time of the filing of such report, or within ten days thereafter, the collector may present said report to the county judge, who shall proceed to examine the same and make such allowance as to him satisfactorily appears to remain uncollected without any default of the collector, and shall certify the same under his hand and seal, and such allowance shall be entered of record by the clerk, and the same proceedings shall be had thereon as if the same had been done by the county court.

SEC. 5754. Notwithstanding such allowance, the tax collector, if possible, shall collect the taxes of such insolvent and delinquent tax-payers; he shall retain a copy of the list reported by him for six months, and which shall be charged to him by the county clerk, and whenever he can find any personal property belonging to such person, he shall distrain and sell the same, on ten days' notice, to the highest bidder for cash, and shall pay over the same as other taxes collected, and the auditor of state, upon every settlement with the collector, shall require of him a report, under oath, whether he has collected taxes from any and of which of said delinquent tax-payers.

SEC. 5755. The county court, or county judge, shall not allow to the collector a credit for the insolvent and delinquent list he reports, unless the same is verified by the oath of the collector, as prescribed in section 5751, nor shall the same be allowed to the collector merely because he presents it duly sworn to. But the county court, or county judge, shall carefully examine each school district and incorporated city or town list, as reported, and shall scrutinize each name and amount reported insolvent, and avail himself of any information by witnesses to test the accuracy of said list, and shall not allow to the collector credit for the taxes of any delinquent who may be ascertained to have any personal property by a sale of which to make such taxes, and all of said lists for which the collector shall not be allowed as a credit shall stand as a charge against such collector.

SEC. 5756. Each collector, in making returns of the delinquent list of personal property to the clerk of the county court, shall note on the margin of said returns the county in this state to which any delinquent tax-payer may have removed or resides in, with the date of his removal, if he is able to ascertain such fact. The clerk of the county court shall immediately forward to the clerk of any county of this state to which any delinquent tax-payer has removed or resides in a certified statement or account of the taxes so assessed and not paid, which statement or account shall specify the value of the property on which such taxes were levied, and amount of the taxes levied thereon, with the penalty and cost, and such collector shall proceed to collect the same, in the same manner and with like authority as herein prescribed for collecting delinquent taxes upon personal property, and shall make return thereof to the collector of the proper county.

SEC. 5757. The collector may collect at any time all delinquent personal property tax in his county, or that may be sent from another county, by the sale of property or otherwise, and shall make returns of the amount so collected to the proper counties and officers.

SEC. 5758. The delinquent list, together with the fees allowed thereon to any collector, shall be delivered to his successor, and the same shall be returned to the clerk of the county court by the outgoing collector for that purpose, and

so on until the whole shall be collected. *Provided*, that after said list has been returned two years, the county court shall have power to strike off all names of persons who, in the opinion of such court, own no property out of which the taxes due on said list can be made by sale or otherwise. *Act March 31, 1883, secs. 115-126.*

SEC. 5759. The collector shall, in the manner required by section 5751, make out and return a list stating the amount due from each delinquent officer required by law to pay to the collector the amount of revenue, penalties and other sums by such officer received (*). *Rev. Stat., chap. 128, sec. 65.*

Delinquent List of Real Estate.

SEC. 5760. The collector shall, by the first Monday in March in each year (†), file with the clerk of the county court a list or lists of all such taxes levied on real estate as such collector has been unable to collect, therein describing the land or town or city lots on which said delinquent taxes are charged as the same are described on the tax-book, and the collector shall attach thereto his affidavit to the correctness of such list. The clerk of the county court shall carefully scrutinize said list and compare the same with the tax-book and record of tax receipts hereinbefore provided for, and shall strike from said list any tract of land, town or city lot upon which the taxes shall have been paid, or which does not appear to have been entered upon the tax-book, or that shall appear from the tax-book to be exempt from taxation.

SEC. 5761. No taxes returned delinquent, as aforesaid, shall be paid into the state treasury, except by the collector. It shall be the duty of the clerk of the county court to add a penalty of twenty-five per centum upon all taxes so returned delinquent, which penalty shall be collected in the manner provided for the collection of delinquent taxes.

SEC. 5762. The clerks of the several counties of this state shall cause the list of the delinquent lands in their respective counties, as corrected by them, to be published weekly for two weeks (‡), between the first Monday in March and the second Monday in April in each year. Such list of delinquent lands shall be published in some newspaper of the county, if any be published therein; if not, in some newspaper published nearest to said county, having a circulation in such county.

SEC. 5763. There shall be attached to said list a notice that said delinquent lands will be sold by the county collector; said notice shall be in substance as follows (**):

Delinquent Tax Sales.

The lands and lots and parts of lots returned delinquent in —— county for the year 18—, together with the taxes and penalty charged thereon, agreeably to law, are contained and described in the following list, viz.: [Here insert the list, with the names of the owners, as the same are described on said list as taken from the tax-book.] And notice is hereby given that said several

(*) See SECS. 5775, 5776, 5779.

(†) See *Hickman v. Kempner*, 35—505.

(‡) See *Pennell v. Monroe*, 30—661.

(**) See *Thweatt v. Black*, 30—732.

tracts, lots or parts of lots, or so much thereof as may be necessary to pay the taxes, penalty and cost due thereon, will be sold by the county collector, at the court-house in said county, on the second Monday in April next, unless the said taxes, penalty and costs be paid before that time; and that the sale will be continued, from day to day, until the said tracts, lots and parts of lots be sold.

[Date of notice.]

_____,
Clerk of _____ County.

The clerk of the county court shall record said list and notice in a book to be by him kept for the purpose, and shall certify at the foot of said record, stating in what newspaper said list was published, and the date of publication, and for what length of time the same was published before the second Monday in April then next ensuing, and such record, so certified, shall be evidence of the facts in said list and certificate contained.

Sale of Delinquent Lands.

SEC. 5764. The collector shall attend at the court-house in his county on the second Monday in April next after the publication of the list, as hereinbefore prescribed (†), and shall then and there, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon, proceed to offer for sale each tract of land, city or town lot for the taxes, penalty and costs thereon, and the person offering at such sale the amount of taxes, penalty and costs due on the whole tract or lot for the smallest subdivision thereof shall be the purchaser thereof; and if no person shall offer or bid the amount of taxes, penalty and costs due on said tract, lot or part thereof, then the collector shall bid the same off in the name of the State of Arkansas, bidding therefor the amount of taxes, penalty and costs due thereon; and, where less than the whole of a tract of land or lot is sold, the part sold shall be laid off in a square in the north-east corner.

SEC. 5765. The collector shall continue said sale from day to day until each tract of land, city or town lot, or part thereof, shall be sold. He shall be allowed ten cents for each tract of land sold.

SEC. 5766. The person purchasing such tract, lot, or part thereof, shall forthwith pay the collector the amount of taxes, penalty and costs charged thereon, and, on failure so to do, the collector shall immediately offer said tract of land, town or city lot, or part thereof, again for sale, in the same manner as if no such sale had been made, and, in case there should be no bid when again offered, the collector shall bid the same off to the state, as prescribed in this act; upon such tract of land, town or city lot, or part thereof, the collector shall not consider the bid of the person who bid the same off in the first instance and failed to pay therefor.

SEC. 5767. When the collector shall bid the amount of taxes, penalty and costs for the state, as hereinbefore provided, the state shall not be required to pay the same to the collector.

SEC. 5768. The collector or his deputy, or the clerk of the county court or his deputy, shall, neither directly or indirectly, be concerned in the purchase of any tract of land, town or city lot sold for the payment of taxes (‡).

(†) See *Vernon v. Nelson*, 33—748.

(‡) See *Hare v. Carnall*, 39—196.

SEC. 5769. The clerk of the county court (*) shall attend all such sales of delinquent lands and lots, town or city lots, or parts thereof, made by the collector of the county, and shall make a record thereof in a substantial book, therein describing the several tracts of land, town or city lots, or parts thereof, as the same shall be described in the advertisement aforesaid, stating what part of each tract of land, town or city lot was sold, and the amount of taxes, penalty and costs due thereon, and to whom sold; and he shall record in a separate book, to be kept for that purpose, each tract of land, town or city lot sold, to the state, together with the taxes, penalty and cost due thereon. Immediately after such sale the clerk of the county court shall make out and certify to the auditor of state a copy of each of said sale lists as recorded in said book, together with an abstract thereof showing the total valuation of the property contained in each, and the total amount of the taxes, penalty and costs thereon in each.

SEC. 5770. The collector shall make out and deliver to the purchaser of any land or town or city lots, or parts thereof, sold for delinquent taxes as aforesaid, a certificate of purchase, for which the purchaser shall pay the collector twenty-five cents, therein describing the lands or lots as the same were described in the notice of sale, stating therein what part of such tract of land, town or city lot was sold, and the amount of taxes, penalty and costs paid therefor. Such certificate shall be assignable in law, and an assignment thereof shall vest in the assignee or his legal representative all the right, title and estate of the original purchaser (ggg).

SEC. 5771. The clerk of the county court shall, immediately after the sale, transfer upon the tax-books all lands sold for taxes to the name of the purchaser, charging him therefor the sum of ten cents for each tract, which shall be charged and paid as part of the cost of the sale.

REDEMPTION OF LANDS SOLD FOR TAXES.

SEC. 5772. All lands, town or city lots, or parts thereof, which may hereafter be sold for taxes at delinquent sale, under the laws of this state, may be redeemed at any time within two years from and after the sale thereof (†); and all lands, city or town lots belonging to insane persons, minors or persons in confinement, and which have been, or may hereafter be, sold for taxes, may be redeemed within two years from and after the expiration of such disability (‡).

SEC. 5773. Where any tract or portion of land, town or city lot, or any part thereof, shall be sold for taxes and afterward redeemed, it shall be the duty of the clerk of the county court to insert a minute of such redemption on the record of lands sold for taxes, the date thereof, and by whom made, and sign the same officially.

SEC. 5774. All applications for the redemption of lands or town or city lots sold to the state or to individuals for taxes shall be made to the clerk of the county court of the county in which the land or town or city lot was sold.

(*) See *Cole v. Moore*, 34—582.

(ggg) See *Bird v. Jones*, 37—195.

(†) See *Lar v. Carna*’, 39—196; *Thweatt v. Black*, 30—732.

(‡) See *Carroll v. Johnson*, 41—62.

SEC. 5775. Any owner, or his agent, or any other person, for the owner (h), desiring to redeem any land, town or city lot, or part thereof, sold for taxes under or by virtue of any law of this state, may, within the time limited by law for such redemption, deposit with the county treasurer, upon the certificate of the clerk of the county court particularly describing such land or town or city lot, an amount of money equal to the taxes for which said land or town or city lot was sold, together with penalty, cost and the taxes subsequently paid thereon by such purchaser, or those claiming under him, with interest at the rate of ten per cent. per annum on the whole amount so paid.

SEC. 5776. Upon the presentation of such certificate of the clerk of the county court to the county treasurer, and upon the payment of the money to the treasurer as aforesaid, he shall give the person making such payment duplicate receipts therefor, describing the land, town or city lot, or part thereof, as the same is described in or upon the certificate of the clerk of the county court aforesaid, one of which receipts shall be registered by the treasurer and immediately filed with the clerk of the county court by the person receiving the same, and thereupon the clerk of the county court shall forthwith cancel the sale and transfer of such land, city or town lot, and such receipt when so filed shall operate as an extinguishment of all rights, either in law or equity, conferred in any way or manner by such sale.

SEC. 5777. In all cases where such deposit shall be made within two years from the time of the sale of such lands, town or city lots, or any part thereof, for delinquent taxes, the clerk of the county court shall, at the request of the person presenting the receipt of the county treasurer for such deposit, note such fact on the back of said certificate, and sign his name thereto. When any tract, town or city lot, or any portion thereof, is thus redeemed, or any deposit with the county treasurer is thus made, it shall be the duty of the clerk of the county court to note such redemption or deposit, the date thereof, and by whom made, on his record of tax sales, and sign his name officially thereto.

SEC. 5778. When any joint tenants, tenants in common, or coparceners, shall be entitled to redeem any land or lot, or part thereof, sold for taxes, and any person so entitled shall refuse or neglect to join in the application for the certificate of redemption, or from any cause can not be joined in such application, the clerk of the county court may entertain the application of any one of such persons, or as many as shall join therein, and may make a certificate for the redemption of such portion of said land or lot, or part thereof, as the person making such application shall be entitled to redeem.

SEC. 5779. Lands sold to the state may be redeemed within two years after sale, subject to the same restrictions, conditions and regulations as hereinbefore described in relation to the redemption of lands sold for taxes, by the application to the clerk of the county court, and payment of the same amount and penalty hereinbefore mentioned, and the taxes which would have accrued thereon if such land or lot had been continued on the tax-books and the taxes extended to the county treasurer, and the amount due the state shall be paid by the county treasurer to the county collector, who shall give duplicate receipts therefor, stating in said receipts the amount belonging to each fund separately, one of which shall be immediately forwarded by the treasurer to the auditor, and

(h) See *Merrick v. Hull*, 15—341; *Woodward v. Campbell*, 30—580; *Sanders v. Ellis*, 42—215.

the other to the clerk of the county court, who shall make quarterly reports to the auditor of the amounts due the state on account of such redemption of any land sold to the state as herein provided. It shall be the duty of the clerk of the county court to make a note thereof on the record book of such sale provided for in this act.

TAX DEEDS.

SEC. 5780. At any time after the lapse of two years from the time of sale of any tract or lot of land for taxes, if the same shall remain unredeemed, the clerk of the county court, on production of the certificate of purchase, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the tract or lot described in such certificate. In case the certificate of purchase has been assigned the clerk of the county court shall briefly recite the fact in the deed. The deed so made by the clerk of the county court shall be acknowledged and recorded in the same manner that other deeds and conveyances of real estate are required to be acknowledged by the laws of this state, and shall be substantially in the following form, viz. (§):

Know all men by these presents, that, whereas, the following described property [here describe the land sold], situate in the county of ——— and State of Arkansas, was subject to taxation for the year (or years) A. D. 18—; and, whereas, the taxes assessed upon said real property for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and, whereas, the collector of the revenue of said county did, on the ——— day of ———, A. D. 18—, by virtue of the authority in him vested by law, at the sale begun and publicly held on the second Monday in April, A. D. 18—, expose to public sale at the court-house in the county aforesaid, in substantial conformity with all the requirements of the statutes in such cases made and provided, the real property above described, for the payment of the taxes, penalty and cost then due and remaining unpaid on said property; and, whereas, at the time and place aforesaid, ———, of the county of ——— and the state of ———, having offered to pay the sum of ——— dollars and ——— cents, being the whole amount of the taxes, penalty and costs then remaining due and unpaid on said property, for [describe], which was the least quantity bid for, and payment having been by him made to said collector, said property was stricken off to him at that price; and, whereas, the said ——— did, on the ——— day of ———, A. D. 18—, duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest therein, to ———, of the county of ——— and state of ———; and, whereas, two years have elapsed since the date of said sale, and said property has not been redeemed as provided for by law:

Now, therefore, I, ———, clerk of the county court of the county aforesaid, in consideration of the said sum of money to the collector paid as aforesaid, and by virtue of the statutes in such cases made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said ———, his heirs and assigns, the real property aforesaid,

(§) See *Pettus v. Wallace*, 29—476; *Pack v. Crawford*, *Ib.*, 489; *Spain v. Johnson*, 31—314; *Jack v. Dyer*, *Ib.*, 324; *Montgomery v. Birge*, *Ib.*, 491; *Crane v. Field*, 30—579.

and more particularly described as follows: [Here describe as sold.] To have and to hold unto him, the said ———, his heirs and assigns forever; subject, however, to all the rights of redemption provided by law.

In witness whereof, I, ———, clerk of the county court as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name, on this ——— day of ———, A. D. 18—.

_____,
Clerk of the County Court of ——— County, Arkansas.

STATE OF ARKANSAS, }
COUNTY OF ———. }

I hereby certify that, before me, ———, in and for said county, personally appeared the above-named ———, clerk of the county court of said county, personally known to me to be the clerk of the county court of said county at the date of the execution of the above and foregoing conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of the county court of said county, and acknowledged that he, as clerk of the county court of said county, had executed the same for the considerations, uses and purposes therein contained, and set forth and desired the same certified, which was done.

Given under my hand and seal, on this ——— day of ———, 18—

SEC. 5781. The deed shall be signed by the clerk of the county court, in his official capacity, and acknowledged by him before some officer authorized by law to take acknowledgments of deeds, and, when substantially thus executed, shall vest in the purchaser all the right, title, interest and estate of the former owner in and to the lands conveyed (*), and also all the right, title and claim of the state and county thereto; and shall be *prima facie* evidence (hh) that all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser were done.

SEC. 5782. In all controversies and suits involving title to real property, claimed and held under and by virtue of a deed executed substantially as aforesaid by the clerk of the county court, the party claiming title adverse to that conveyed by such deed shall be required to prove, in order to defeat the said title, either that the said real property was not subject to taxation for the year (or years) named in the deed, or that the taxes had been paid before the sale (†), that the property had been redeemed from the sale according to the provisions of this act, and that such redemption was had or made for the

(*) See *Frierson v. Brauch*, 30—453; *Jacks v. Dyer*, 31—234; *Bird v. Jones*, 37—195; *Moore v. Woodall*, 40—42; *Wright v. Graham*, 42—140; *Sanders v. Ellis*, *Id.*, 215; *Waggener v. McLaughlin*, 33—195; *Hunt v. Gaines*, *Id.*, 267; *Gwynn v. McCauley*, 32—97.

(hh) See *Cairo & Fulton R. R. Co. v. Parks*, 32—131; *Hickman v. Kemper*, 35—505.

(†) See *Davis v. Hare*, 32—386; *Thornton v. Smith*, 36—508.

use and benefit of persons having the right of redemption, under the laws of this state; or that there had been an entire omission to list or assess the property, or to levy the taxes, or to give notice of the sale, or to sell the property. But no person shall be permitted to question the title acquired by a deed of the clerk of the county court, without first showing that he, or the person under whom he claims title to the property, had title thereto at the time of the sale, or that title was obtained from the United States or this state after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title as aforesaid. *Provided*, that in any case where a person had paid his taxes, and, through mistake (or otherwise) by the collector, the land upon which the taxes were paid was afterward sold, the deed of the clerk of the county court shall not convey the title. *Provided, further*, that in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling said lands or in the purchaser, to defeat the same, and, if fraud is so established, such sale and title shall be void.

SEC. 5783. The purchaser at the sale of lands or lots, or parts thereof, for the taxes, of the interest of any joint tenant, tenants in common or coparcener, or any portion of such interest, shall, on obtaining the deeds from the clerk of the county, hold the same as tenant in common with the other proprietors (or proprietor) of such land or lot, and be entitled to all the privileges of a tenant in common, until a legal partition of such land or lot, or part thereof, shall be made.

SEC. 5784. Immediately after the expiration of the two years allowed by law for the redemption of land sold for taxes, the clerk shall make out a certificate of sale to the state for all lands purchased by the state, as shown by the records of such tax sale in his office which have not been redeemed, and state therein the amount of the taxes, penalty and cost thereon, and cause the same to be recorded in the recorder's office of the county, and thereupon the title to all lands embraced in such certificate shall vest in the state, and the clerk shall immediately transmit such certificate to the commissioner of state lands, and thereupon the said lands shall be subject to disposal, as other forfeited lands shall be (hhh).

SEC. 5785. When, by the provisions of any former law of this state, any officer or person was by law authorized to make deeds for lands or lots sold for taxes, and the same has not been done, the clerk of the county court of the proper county shall be and is hereby authorized to make such deeds to all persons entitled thereto, and the deeds which shall be made by the clerk of the county court shall be good and valid in law, as if made by the person authorized under such former law to make such deeds.

SEC. 5786. In case of a certificate of purchase of lands sold for delinquent taxes, issued to any purchaser under any of the acts heretofore passed, having been lost, mislaid or destroyed, and the fact being shown to the county clerk, and no deed having been executed therefor, said county clerk, being fully satisfied from the evidence of the existence and loss of any such certificate, shall, on written application for that purpose, proceed to make and execute to such purchaser a good and sufficient deed of conveyance for any such tract of land

(hhh) See *Davis v. Hare*, 32—386.

or lot, which deed shall be good and valid in law, to all intents and purposes, as if such certificate had not been mislaid, lost or destroyed.

SEC. 5787. The clerk of the county court shall enter in a book, to be kept in his office, a minute of all deeds by him made for lands and lots, and parts thereof, sold for taxes, therein naming the person who stood charged with the taxes at the time of such sale, the name of the purchaser, a brief description of the land or lot, or part thereof, sold, the quantity sold, the name of the grantee in the deed and the date of the execution.

SEC. 5788. The clerk of the county court of any county in which any lands or lots are situate which shall have been or may hereafter be sold for taxes, under the provisions of any law of this state, is hereby authorized and required to execute the proper deed therefor to the person entitled to receive the same, whether said land or lot shall, at the time of the execution of said deed, continue to be within said county or not, in the same manner as though the said land or lot still remained within the limits thereof, any law to the contrary notwithstanding, for which he shall be entitled to charge and receive a fee of one dollar.

SEC. 5789. Upon the sale of any land, town or city lot, or part thereof, for taxes then due, if such sale should prove invalid on account of any informality in the proceedings of any officer having any duty to perform in relation thereto, the purchaser at such sale shall be entitled to receive from the proprietor of such land or lot the amount of taxes for which such land was sold, and the amount of taxes paid thereon by the purchaser subsequent to such sale, and such land or lot shall be bound for the payment thereof (i), and to recover from the officer failing to perform his duty as aforesaid (for which such officer shall be liable on his official bond), the penalty and cost of advertising, with interest thereon from the payment thereof, and, in the event of the purchaser having heretofore bid and paid a greater amount than the taxes, penalty and cost of advertising, the clerk of the county court shall draw a warrant on the county treasury for the amount of such excess as may have been paid thereon in favor of the purchaser or his assignee.

SEC. 5790. No sale of any land or lot, for delinquent taxes, shall be considered invalid on account of its having been charged on the tax-book in any other name than that of the rightful owner. *Provided*, that such land or lot be in other respects sufficiently described on the tax-book, and the taxes for which the same is sold be due and unpaid at the time of such sale.

SEC. 5791. All actions to test the validity of any proceeding in the appraisement, assessment or levying of taxes upon any land or lot, or part thereof, and all proceedings whereby is sought to be shown any irregularity of any officer, or defect or neglect thereof, having any duty to perform, under the provisions of this act, in the assessment, appraisement, levying of taxes, or in the sale of lands or lots delinquent for taxes, or proceedings whereby it is sought to avoid any sale under the provisions of this act, or irregularity or neglect of any kind by any officer having any duty or thing to perform under the provisions of this act, shall be commenced within two years from the date of sale, and not afterward (ii).

(i) See *Cole v. Moore*, 34—582; *Worthen v. Badgett*, 32—496; *Hunt v. Curry*, 37—100; *Hickman v. Kempner*, 35—505; *Hare v. Carnall*, 39—196; *Coats v. Hill*, 41—149; *Bagley v. Castile*, 42—77; *Rogers v. Kerr*, *Ib.*, 100.

(ii) See SEC. 4475; *Cairo & Fulton R. R. Co. v. Parks*, 32—131.

SEC. 5792. No purchaser of any land, town or city lot, nor any person claiming under him, shall be entitled to any compensation for any improvements which he shall make on such land, town or city lot, within two years from and after the sale thereof; for improvements made after two years from the date of sale, the purchaser shall be allowed the full cash value of such improvements, and the same shall be a charge upon said land (j). *Act March 31, 1883, secs. 127-155.*

SEC. 5793. When it appears on the face of any deed executed by a county clerk, for land sold at delinquent tax sales, that two or more (†) tracts of land were sold together, contrary to law, when, in fact, said tracts were sold separately, as required by law, at the time of such sale, the clerk of the county court of the county in which said lands were sold, upon the presentation to him of such deed, and being satisfied from the records of his office that said tracts of land were sold separately, shall file said deed in his office and cancel the same, and shall thereupon execute in lieu thereof a deed for said lands, reciting the execution of the former deed and the date thereof, the error therein, that each tract was sold separately, and the amount for which the same was sold, and in all other respects conform to the requirements of law.

SEC. 5794. Said deed, when executed as provided in section 5793, shall relate back to said canceled deed, and have the same force and effect, both in law and equity, as if executed on the same day. *Act Feb. 17, 1883.*

COLLECTION OF LICENSE TAX.

SEC. 5795. It shall be the duty of the clerk of the county court to issue blank licenses for the privileges and purposes mentioned in this act (k), and deliver them to the collector, and charge him with the amount thereof, specifying in each case the number and amount of each kind of license (kk).

SEC. 5796. In case where, by the provisions of this act, the privilege is to be for twelve months, or less, such license shall expire on the thirtieth day of April next after the date of the delivery thereof by the collector to the party applying for the same, and in case where the privilege is to be for six months, or less, such license shall expire on the thirtieth day of June and the thirty-first day of December, respectively, next after the date thereof.

SEC. 5797. Each blank license shall be signed by the clerk, and authenticated by the seal of the county court, and the collector in granting every license shall fill up and countersign one of the blank licenses delivered to him by the clerk of the county court, and no license unless thus signed, authenticated and countersigned shall authorize or avail any person to act under the same. The collector shall be entitled to five per cent. commissions on each license for amount collected, to be paid by the person receiving the license.

SEC. 5798. The privilege taxes paid, as herein provided, to the collector shall be reported by him quarterly, and paid into the state and county treasuries as other taxes, and each collector shall, at the end of each quarter, make to the clerk of the county a detailed report of licenses issued by him during

(j) See SECS. 2649-2651.

(†) See cases cited at SEC. 5780.

(k) See SECS. 5688-5691 and 5696.

(kk) See *Crawford v. Carson*, 35-365.

the quarter aforesaid, showing the number and date of the license, the name of the license, the privilege for which it was issued, and the amount collected for it, and, if any collector shall fail to make such report, he shall be notified by the clerk of the county court and required to make such report, and, for failure, shall be guilty of a misdemeanor.

SEC. 5799. Immediately upon the collector making such quarterly report, the clerk of the county court shall certify to the auditor the amount of taxes due the state collected, and the auditor shall charge the same to the collector.

SEC. 5800. It shall be the duty of the sheriff, or any constable of the county, to ask, demand and receive from the person or persons who may attempt in any county to make and exhibit any of the objects or performances upon which a specified tax is levied the tax for such exhibition, and, upon demand, if such person or persons shall neglect or refuse to pay the tax, he or they shall be deemed disturbers of the public peace, and it shall be the duty of the officers making such demand to command him or them to forthwith desist, and, to compel obedience to such command, such officer may call to his aid any number of citizens.

SEC. 5801. It shall be the duty of the collector to call upon any person he may know, or have reason to believe, to be pursuing within his county any business upon which, by the provisions of this act, a specific tax is levied, without having a license therefor, as required by law, to produce such license, and if such person fail or refuse to produce to such collector such license, then it shall be the duty of said collector to immediately give information against such person to some justice of the peace of said county; but if the circuit court be in session, then it shall be the duty of the collector to give the information to the grand jury of said county.

SEC. 5802. The license herein provided for shall be a personal privilege, enjoyable only by the person to whom it is issued, and shall not be transferable.

SEC. 5803. The account of the clerk of the county court against the collector for the license herein provided for shall be so kept as to show by denominations and numbers exactly what licenses issued to him by said clerk are in his hands at any time, and upon the final settlement of each collector the clerk of the county court shall require the return by such collector of all of such licenses issued to such collector and not issued by him, and such collector shall receive credit for all of such licenses as he shall return to such clerk without having issued them, and for all of such licenses as such collector shall not thus account for he shall be held liable upon his official bond as collector for so much money as the amount of such license, and such clerk shall certify such settlement to the auditor.

PAYMENT OF TAXES.

Who Liable to Pay—Guardians, Agents, Etc., Duties and Rights of.

SEC. 5804. Every person shall be liable to pay tax for the lands, town or city lots of which he may stand seized for life, by the courtesy, in dower, or by husband in right of his wife, or may have the care of as guardian, executor or administrator, or as agent or attorney, having the funds of the principal in his hands.

SEC. 5805. It shall be the duty of each person holding lands as aforesaid to pay the taxes which may be assessed thereon each year.

SEC. 5806. Every person holding lands as guardian, executor or administrator, and neglecting or refusing to list or pay the taxes upon the same in the manner aforesaid, shall be liable to an action by his ward or devisee for any damage sustained by such neglect.

SEC. 5807. Every person having the care of lands as agent or attorney as aforesaid, and having funds of the principal in his hands for such purpose, neglecting or refusing to list or pay the taxes on such lands, shall be liable in an action to his principal for any damage such principal may have sustained by such neglect or refusal.

SEC. 5808. Every attorney, agent, guardian, executor or administrator, seized or having the care of lands as aforesaid, who shall be put to any trouble or expense in listing or paying the taxes on such lands, shall be allowed a reasonable compensation for the time spent, the expenses incurred and money advanced as aforesaid, which shall be deemed in all courts a just charge against the person for whose benefit the same shall have been advanced, and the same shall be preferred to all other debts or claims, and be a lien on the real estate as well as the personal estate of the person for whose benefit the same shall have been advanced (kkk).

SEC. 5809. If any person who shall be seized of lands for life, or in right of his wife, shall neglect to pay the taxes thereon so long that such lands shall be sold for the payment of the taxes, and shall not within one year after such sale redeem the same according to law, such person shall forfeit to the person or persons next entitled to such land in remainder or reversion all the estate which he or she, so neglecting as aforesaid, may have in said lands, and the remainder-man or reversioner may redeem the lands in the same manner that other lands may be redeemed after being sold for taxes; and, moreover, the person so neglecting as aforesaid shall be liable in an action to the next entitled to the estate for all damages such person may have sustained by such neglect.

SEC. 5810. In all cases where any tract of land may be owned by two or more persons as joint tenants, coparceners, tenants in common, and one or more proprietors shall have paid or may hereafter pay the tax, or tax and penalty, charged on his proportion of such tract, or one or more of the remaining proprietors shall have failed, or may hereafter fail, to pay his proportion of his tax, or tax and penalty, charged on said land, and partition of said land has or shall be made between them, the tax, or tax and penalty, paid as aforesaid, shall be deemed to have been paid on the proportion of said tract set off to the proprietor who paid his proportion of said tax, or tax and penalty, and the proprietor so paying the tax, or tax and penalty, as aforesaid, shall hold the proportion of such tract set off to him, as aforesaid, free from the residue of the tax, or tax and penalty, charged on said tract before partition, and the proportion of said tract, set off to the proprietor who shall not have paid his proportion of said tax, or tax and penalty, remaining unpaid, shall be charged with said tax, or tax and penalty, in the same manner as if said partition had been made before said tax, or tax and penalty, had been assessed.

SEC. 5811. Whenever any land so held by tenants in common shall be sold upon proceedings in partition, or shall be taken by the election of any of the

(kkk) See *Peay v. Field*, 30—600.

parties to such proceedings, or when any real estate shall be sold at judicial sale, or by administrators, executors, guardians or trustees, the court shall order the taxes and penalties and the interest thereon against such lands to be discharged out of the proceeds of such sale or election.

SETTLEMENT OF COLLECTOR.

With the Clerk.

SEC. 5812. The clerk of the county court shall, within ten days after the close of the sale of lands for delinquent taxes, make settlement with the collector of his county, and ascertain the amount of taxes with which said collector is to stand charged, and after deducting the amount of taxes still remaining delinquent, and on all errors and the collection fees allowed the collector from the several taxes charged on the tax-book in a just and ratable proportion, the collector shall be held liable for the balance of such taxes, and the clerk of the county court shall certify the balance due the county, and the balance due for every other purpose, to the proper persons who by law are entitled to the custody of said balances (1).

SEC. 5813. The settlement so made with the collector shall be presented to the county court by the clerk at the first term thereof after said settlement is made, and, if the same shall be found to be correct, the county court shall order the settlement spread in full upon the records of said county court.

SEC. 5814. The county courts of the several counties in this state shall, at the April term thereof, examine the settlement of the collectors of the several counties with the clerks of said counties, and approve or reject the same.

With the Auditor.

SEC. 5815. The collector shall, within fifteen days after his settlement with the clerk of the county court, proceed to the seat of government, and there make settlement with the auditor for all the state taxes collected by him. The auditor shall deduct the amount shown to be delinquent, and by error, shown by the list furnished him by the clerk, and the collection fees allowed the collector from the several taxes charged on the tax-books, in a just and ratable proportion, and such fees as he may be entitled by law to receive. The collector shall be held liable for the balance of such taxes (1).

To Pay Over Money After Settlement.

SEC. 5816. The collector shall, immediately after such settlement, and before the fifteenth day of May of each year, pay over the moneys thus found due at such settlements to the person or officer entitled to receive them, taking therefor duplicate receipts, one of which, in each instance, shall be filed with the clerk of the county court, for money so paid.

(1) The collector is required to pay over to the city treasurer taxes belonging to municipal corporations within five days after his settlement with the clerk. SEC. 899.

(11) See *Crawford v. Carson*, 35—565.

Failing to Pay Money Into the State Treasury—Penalty and Proceedings to Collect.

SEC. 5817. If any collector of revenue and others bound by law to pay money directly into the state treasury shall fail to pay the amount so found due into the treasury and produce the treasurer's receipt to the auditor therefor, within fifteen days after the settlement required in section 5815, the delinquent shall forfeit the commissions allowed him by law, and the sum of twenty-five per centum on the amount, and also a penalty of five per centum per month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment, and the auditor shall charge such delinquent accordingly, and the amount of principal and forfeitures may be recovered as hereinafter provided for.

SEC. 5818. It shall be the duty of the auditor, immediately after the time specified in section 5815, in each year, to issue a warrant of distress against such delinquent and his securities, directed to the coroner or any constable in the county in which such delinquent and securities reside, commanding him to distrain, levy and sell the goods and chattels, lands and tenements of such delinquent collector and his securities, in the same manner as such property is required to be sold by virtue of an execution issued out of the circuit court (m).

SEC. 5819. When any lands and tenements shall be sold by any officer under the authority of any such warrant, he shall make, execute, acknowledge and deliver to the purchaser, at the expense of said purchaser, a deed for such lands and tenements in the same manner as sheriffs are required to make and acknowledge deeds for lands sold under execution, and such deeds, when recorded, shall have the same force and effect as a deed made by a sheriff.

SEC. 5820. The amount due by such collector shall be a lien on the goods and chattels, lands and tenements of such delinquent collector and his securities from the time such warrant shall come to the hands of such officer until the same shall be discharged according to law.

SEC. 5821. It shall be the duty of every such officer, immediately after the receipt of any such warrant, to indorse thereon the time when it came to his hands, and to cause a record thereof to be made in the office of the clerk of the circuit court of his county.

SEC. 5822. All moneys which may remain in the hands of such officer of the proceeds of any sale of goods and chattels, lands or tenements, after paying the amount of such warrant and the cost and expense of such sale, shall be returned to such delinquent collector, or his securities, as the case may be.

SEC. 5823. Every officer collecting money by virtue of any warrant issued by the auditor as aforesaid shall be entitled to receive the same fees as are allowed by law to sheriffs for collecting and paying over moneys under executions.

SEC. 5824. It shall be the duty of every officer collecting money by virtue of any warrant issued as aforesaid to pay the same into the state treasury within thirty days after the receipt thereof. He shall, with his securities, be liable on his official bond for the amount so collected, with the sum of twenty-

(m) See *Murray's Lessee v. Hoboken Land and Improvement Co.*, 18 Howard, 272; *Crawford v. Carson*, 35—565.

five per centum added thereto, in case of his failure to pay the same into the state treasury as herein provided. *Act March 31, 1883, secs. 156-178.*

FINANCIAL REPORT OF CLERK.

SEC. 5825. The clerk of the county court shall, within thirty days after each annual settlement (with the county collector), make out a full and complete financial report of the condition of the affairs of the county, giving its indebtedness, its source of revenue, the amount expended during the fiscal year for all purposes, the amount from all sources for all purposes collected, the financial condition of each school district in the county, and forthwith publish the same in some newspaper published in such county; if no newspaper be published in such county, then the same to be published in a newspaper having the largest circulation in the county.

SEC. 5826. The county court shall make an order for the payment of the fee for printing said report in accordance with the law in force at the time such publication is made regulating fees for printing. *Ib., sec. 86.*

SETTLEMENT OF CLERKS AND SHERIFFS WITH COURTS OF RECORD.

SEC. 5827. The clerks of the several courts of record of this state shall collect and pay over to the treasurer of their respective counties all taxes due on writs, executions, official seals and other sums of money, by whatever name designated, coming to their hands and belonging to the state or county, and shall render account at each term of their respective courts, verified by oath, of all moneys which have been received to the use of the state or county not before accounted for (mm).

SEC. 5828. Such clerks shall keep a true account of all fines, penalties, forfeitures and judgments imposed, adjudged or rendered in favor of the state or any county by their respective courts, distinguishing those payable to the state from those payable to the county, and shall keep the same open to the inspection of the judges of the respective courts and the members of the grand jury.

SEC. 5829. It shall be the duty of the judges of such courts to audit and adjust the accounts of their respective clerks, according to the records, dockets and papers of their respective courts, and to make two separate bills of the several sums, wherewith their clerks shall be chargeable, specifying on what account the same is payable, and certify a copy thereof to the clerk of the county court, who shall file and charge the same accordingly; and the other shall be certified and delivered to the county treasurer.

SEC. 5830. It shall be the duty of the clerks of all courts of record, at each term thereof, to settle with the sheriff of each county for all moneys by him received, or which he ought to have collected, for the use of the county, and which have not been accounted for, and they shall make out two separate lists of all sums chargeable to any sheriff and payable to any county, specifying on what account, and certify the same under the seal of the court.

SEC. 5831. One of the lists so certified shall be immediately transmitted to the clerk of the county court to which said sums are payable, who shall imme-

(mm) See *Lee County v. Abrahams*, 31—571; *Lee County v. Govan*, *Ib.*, 610.

diately charge the same accordingly, and the other shall be transmitted to the treasurer of the said county.

SETTLEMENT OF THE COLLECTORS AND OTHER OFFICERS WITH THE COUNTY COURT.

SEC. 5832. The county court shall at each regular term cause the collector to settle his accounts of all blank licenses with which he shall stand charged; and, after giving him credit for all licenses returned, shall ascertain the amount due from him on that account, and shall cause the same to be entered of record, so as to show the amount due the county.

SEC. 5833. In like manner and time the sheriff or collector shall be required to settle his accounts of all moneys received by him on account of taxes, fines, penalties and judgments, and the same shall be entered of record, so as to show what is due the state and county, respectively, from what officer received, from what branch of revenue, and the particular fund, if any, to which the same belongs. If any collector shall fail to make settlement with the county court at the time aforesaid, he shall be attached until he makes such settlement. Immediately after such settlement with the county court the clerk of the county court shall certify to the auditor of state the amount due the state, and the collector shall within fifteen days thereafter pay the same into the state treasury, and in ten days thereafter pay over to the county treasurer all sums due the county.

SEC. 5834. The sheriff shall collect and account for all taxes due upon convictions, and all fines, forfeitures and other sums of money, by whatever name designated, owing to the state or any county by virtue of any order, judgment or decree of a court of record (n).

SEC. 5835. Whenever the sheriff or collector shall receive the amount due from any officer by voluntary payment, or by the sale of goods and chattels, he shall give the officer duplicate receipts for the same, stating therein the whole amount received, how much for the state and how much for the county, and the particular fund to which it belongs, and the officers taking such receipts shall, without delay, deposit one of them with the clerk of the county court.

SEC. 5836. The clerk of the county court shall charge the sheriff or collector and county treasurer with all moneys that may come into their hands by virtue of any of the provisions of this act, and the money received for penalty and costs of advertising shall be first applied by the sheriff or collector to the cost of advertising the delinquent lands, and the surplus, if any, paid into the county treasury at the time of his annual settlement. Should there not be sufficient penalty and cost of advertising to pay the cost of advertising the delinquent lands, the balance shall be paid out of the county treasury.

SEC. 5837. Every collector of the county revenue having made settlement according to law of the county revenue received and collected by him shall pay the amount found due from him into the county treasury, and the treasurer shall give duplicate receipts therefor, one of which shall be filed by the collector in the office of the clerk of the county court.

SEC. 5838. Every collector or sheriff who shall fail to make payment of the

(n) See SECS. 5860-5873.

amount due from him on settlement, in the time and manner prescribed in the preceding section, shall forfeit and pay to the county the sum of five per centum per month on the sum wrongfully withheld, to be computed from the time the payment ought to have been made until actual payment, which may be recovered by suit on his official bond (nn.)

SEC. 5839. All collectors, sheriffs, clerks, constables and other persons chargeable with moneys belonging to any county shall render their accounts to and settle with the county court at each regular session thereof, and pay into the county treasury any balance which may be due the county, and take duplicate receipts therefor, and deposit one of them in the office of the clerk of the county court within five days thereafter (o).

SEC. 5840. Whenever the court shall make such settlement with any officer the substance thereof shall be entered of record, so as to show separately the whole amount received by such officer, the amount of commission allowed him, how much remains due to the state and how much to the county, and on what account each sum of money was received, and to what particular fund, if any, it belongs.

SEC. 5841. All officers who shall have made settlements with the courts as aforesaid shall forthwith pay to the treasurer the full amount with which they shall stand charged on such settlement, and, in default thereof, the sheriff or collector shall enforce the payment in the manner and by the means prescribed in this act for enforcing the collection of taxes.

SEC. 5842. Every officer required to make settlement who shall fail to settle his accounts in the time and manner prescribed by law may be attached and imprisoned until such settlement shall be made to the satisfaction of the court to which he is accountable.

SEC. 5843. Every such officer who shall fail to pay the amount due from him on such settlement, and who shall be returned by the collector or treasurer to the county court as a delinquent, so that the collector or treasurer shall be credited in their accounts with the amount of such delinquency, shall forfeit five per cent. per month on the amount due from the time it ought to have been paid until collected, which may be collected by suit on his official bond.

SEC. 5844. If any person thus chargeable shall neglect to render true accounts, or settle as aforesaid, the county court shall adjust the accounts of such delinquent according to the best information that can be obtained, and ascertain the balance due the county (oo).

SEC. 5845. In such case the court may refuse to allow any commission to such delinquent, and he shall moreover, without delay, pay into the county treasury the balance found due as aforesaid.

SEC. 5846. If such delinquent shall not pay the amount thus found due the county, and produce the treasurer's receipt therefor, within ten days after

(nn) See *Jones v. State*, 14—170.

(o) See SEC. 558.

(oo) It is not necessary that the delinquent officer shall have notice that a settlement of his accounts will be made by the court under this section, because at that term no judgment can be rendered, the proceedings being preliminary.

Unless the delinquent appear at the next term, and show cause for setting aside the settlement as required by section 5847, the court may render judgment against him, but he must have notice to appear. But he may waive notice by appearing and moving to set aside the settlement. *Price v. Crittenden Co.*, 7—162.

If he be dead, notice should be given to his administrator. *Goree v. State*, 22—236, and see *Carnall v. Crawford Co.*, 11—604.

the balance is ascertained, the clerk shall charge such delinquent, as a penalty for such failure, twenty-five per centum on the amount then due.

SEC. 5847. Unless such delinquent shall appear upon the first day of the next succeeding session of the court, and show good cause for setting aside such settlement, the court shall enter judgment for the amount due, with the penalty added thereon, and fifty per centum per annum until the same shall be paid, and may issue execution thereon (p).

SEC. 5848. If good cause be shown for setting aside such settlement, the court may re-examine, settle and adjust the same according to law, and may remit any penalty that may have been imposed.

SEC. 5849. The amount or balance of every account so settled and due to the county shall be a lien from the date of the settlement of such account on the real estate and personal property of the delinquent situated in the county wherein each delinquent lives.

SEC. 5850. When any balance shall be found against any clerk, sheriff, collector, coroner, constable or other officer, for moneys accruing to the county treasury, and the same shall not be paid within the time prescribed by law, it shall be lawful for the county court, fifteen days' notice being given to such delinquents and their securities, to render judgment against delinquents and their securities for the amount of all moneys ascertained to be due the county, and issue execution therefor.

SEC. 5851. Whenever any error shall be discovered in the settlement of any county officer made with the county court, it shall be the duty of the court, at any time within two years from the date of such settlement, to reconsider and adjust the same (pp).

SEC. 5852. Before any such settlement shall be re-examined, it shall be the duty of the court to give such officer ten days' notice of the time and place where such settlement will be adjusted.

PENALTIES.

SEC. 5853. If any county treasurer, collector or sheriff loans any money belonging to the state or county, with or without interest, or uses the same for his own purposes, he shall forfeit and pay for every such offense a sum not to exceed one thousand dollars nor less than five hundred dollars, to be recovered in civil action at the suit of the state, for the use of the state, county, city, town or body politic (q).

SEC. 5854. Every clerk of the county court, assessor or collector who shall, in any case, refuse or knowingly neglect to perform any duty enjoined on him by this act, or who shall consent to or connive at any evasion of its provisions whereby any proceedings herein required shall be prevented or hindered, or

(p) The county court is the forum where the liability of the collector of the county revenue is to be ascertained and evidenced by its records, and an adjudication in that forum is conclusive evidence against the securities as well as the collector. *Jones v. State*, 14—170. It is the province of the county court to adjust and settle the accounts of the collector, and they can not be settled in the circuit court in an action on the collector's bond. *Goree v. State*, 22—236, and see *State v. Craft*, 21—551.

The county court may render judgment against a delinquent collector, or his securities, for the county revenue which he has collected and failed to pay over. *Christian v. Ashley Co.*, 21—142.

(pp) See *White County v. Key*, 30—003.

(q) For other penalties for neglect or violation of official duty on the part of officers charged with the collection, safe-keeping and disbursement of the revenue, see SECS. 5872, 1643, 1781, 1782, 1785, 1789.

where any property required to be listed for taxation or for the collection of taxes thereon, or the valuation thereof, be entered on the tax-books or list at less than the true value, shall, for every such neglect, refusal, connivance or consent, forfeit and pay to the state not less than one hundred nor more than five thousand dollars, at the discretion of the court, to be recovered by an action in the name of the state before the circuit court of the proper county.

OFFICIAL DISTRIBUTION OF TAXES.

SEC. 5855. All taxes collected and arising under the provisions of any law of this state from taxation shall be distributed by the auditor of state, if in possession of state authority, or, if in possession of county authority, by the clerk of the county court, to the several funds to which they belong.

SEC. 5856. The auditor of state is hereby denied authority to draw any warrant on the treasurer to be paid out of the general revenue of the state for the support of common schools, and any act or part of act appropriating any of the general revenue of the state for common schools is repealed.

REFUNDING TAXES ERRONEOUSLY ASSESSED AND PAID.

SEC. 5857. In case any person has paid or may hereafter pay taxes on any property, real or personal, erroneously assessed, upon satisfactory proof being adduced to the county court of the fact, the said court shall make an order refunding to such person the amount of the county tax so erroneously assessed and paid, and, upon production of a certified copy of such order to the auditor, he shall draw his warrant on the state treasurer for the amount of state tax erroneously assessed and paid. Such warrant shall be paid out of the appropriation to pay moneys arising from the erroneous assessment and collection of taxes. But in case there shall be no appropriation, or the appropriation shall have been exhausted, then the auditor shall issue a certificate of indebtedness therefor.

SEC. 5858. If the taxes charged on any land or lot, or part thereof, be regularly paid, and such land erroneously returned delinquent and sold for taxes, the sale thereof shall be void, and the money paid by the purchaser at such void sale shall be refunded to him by the officer having the same in charge, on the order of the county court that such land was erroneously returned delinquent and sold for taxes.

SUITS AGAINST COLLECTORS AND OTHERS—COSTS, ETC.

SEC. 5859. Whenever an action has been or may hereafter be brought against any person holding the office of county collector, county assessor or clerk of the county court for performing or attempting to perform any duty or thing authorized by any of the provisions of this act, or the laws of this state, for the collection of the public revenues, such collector, assessor or clerk shall be allowed and paid out of the county treasury reasonable fees of counsel and other expenses for defending such action or suit, and the amount of any damages or costs adjudged against him, which said fees, expenses, damages and costs shall be apportioned ratably by the clerk of the county court among all

the parties entitled to share the taxes so collected, and by the said clerk shall be deducted from the shares or portions of revenue at any time payable to each, including as one of said parties the state itself, as well as the counties, townships, towns or cities and other corporations or other organizations entitled thereto as aforesaid.

FINES, PENALTIES AND FORFEITURES GO TO THE COUNTIES—COLLECTION OF.

SEC. 5860. All fines, penalties and forfeitures imposed by any court or board of officers whatsoever shall be paid into the county treasury for county purposes. *Provided*, that all fines and penalties of city courts and courts of incorporated towns, for violating city or town ordinances not defined as offenses against the state, may be retained by the city and town for the maintenance of the courts of such city or town.

SEC. 5861. All justices of the peace are prohibited from collecting fines, penalties and forfeitures, but that duty shall devolve upon sheriffs and constables exclusively (qq).

SEC. 5862. Justices of the peace, city judges, police judges, recorders and all other municipal, township or county officers shall, semi-annually, on or before the first day of the circuit court, at each term thereof, file in the office of the clerk of the circuit court of their respective counties, an official transcript of all fines, penalties and forfeitures adjudged by them against defendants in the courts, giving the style of the case, the full name of the parties and the amount of the judgment, if any, in each case, and the name of the officer collecting the same.

SEC. 5863. All constables, city marshals or other collecting officers of any city, township or other public corporations shall, quarterly, on the first Monday in July, October, January and April, turn over to the county treasurer of their respective counties all fines, penalties and forfeitures, less the commission due such officers, which shall be three per cent. for constables on the amount collected by them, taking duplicate receipts therefor, one of which shall be immediately filed with the clerk of the county court of their respective counties. *Provided*, that this shall not require the city marshal to turn over such moneys as may be collected for violation of city or town ordinances.

SEC. 5864. On or before the first Monday of July, October, January and April of each year, the clerks of the county courts shall audit the accounts of constables and other collecting officers referred to in the preceding section; to this end the said clerks of the county courts shall open a separate account with each of the said officers in a book to be kept by said clerks for that purpose. They shall charge said collecting officer with the amount of fines, penalties and forfeitures adjudged against defendants in justices, city, police or other courts in the county, excepting only circuit courts, as shown by the transcript of said judicial officers on file in the offices of the clerks of the county courts.

SEC. 5865. Said constables and other collecting officers shall not be credited with any deficits as to fines and penalties, unless they shall be able to show the death of the party against whom the fine or penalty was adjudged, or that imprisonment in default of the payment of fine has been complied with in

(qq) See *Floyd v. State*, 32—200.

accordance with the provisions of the criminal law. The constables and other collecting officers shall not be credited with any deficit on forfeited bail bonds or recognizances unless the return of the officer serving the execution in said case shall show that the defendant had no property subject to execution, and in such case a certified copy of such return shall be filed with the clerk of the county court by the officer charged with said collection.

SEC. 5866. The clerk of the county court shall, at the commencement of each session of the circuit court of his county, furnish the prosecuting attorney with a written statement of all deficits of constables and other collecting officers on account of fines, penalties and forfeitures. It shall be the duty of the prosecuting attorney to bring suit against said constables and collecting officers and their securities for the deficiency due, and also to prosecute said officers by indictment for malfeasance in office.

SEC. 5867. At the close of the term of each circuit court the clerk of said court shall furnish to the clerk of the county court an official abstract of all fines, penalties and forfeitures adjudged against defendants during said term of the circuit court or courts, giving in said abstract the style of each case, the full name of the parties and amount of each fine, penalty and forfeiture separately.

SEC. 5868. The sheriffs of counties, and they only, are authorized to collect fines, penalties and forfeitures adjudged against defendants in circuit courts of the state, and said sheriffs shall, at the time of their quarterly settlements with the county court, turn over to the county treasurer all moneys received by them (r).

SEC. 5869. The clerk of the county court shall further charge the county treasurer with all fines, penalties and forfeitures turned over by constables and other collecting officers in pursuance of the provisions of this act.

SEC. 5870. The clerk of the county court shall further charge the sheriff with all fines, penalties and forfeitures adjudged in the circuit courts. The sheriff shall not be credited with any deficit on fines or penalties imposed in the circuit court unless he shall be able to show the death of the party against whom the fine or penalty was adjudged, or imprisonment in default of fine, as provided by law in such cases.

SEC. 5871. The sheriff shall not be credited with any deficit or forfeited bail bond or on recognizances, unless the return of the officer charged with the execution of said judgment shall show that the defendant had no property subject to execution, in which case a certified copy of such return shall be filed with the clerk of the county court by the sheriff.

SEC. 5872. A violation of any provision, or failure to comply with any of the requirements of this act, by any of the officers herein enumerated, shall be malfeasance in office, and, upon conviction thereof, said officer shall pay a fine of not more than five hundred dollars and be removed from office.

SEC. 5873. If the settlement of the county collector or sheriff with the clerk of any county court shows any other deficit than that authorized by the provisions of this act, it shall be the duty of the county court to immediately notify the prosecuting attorney for the county in which said collector or sheriff resides of that fact, upon which notice it shall be the duty of the prosecuting attorney to immediately bring suit against said county collector or sheriff and

(r) See SEC. 5834.

his securities for the amount of such deficiency, and also to prosecute said county collector or sheriff by indictment for malfeasance in office. *Ib.*, *secs.* 179-225.

PROCEEDINGS TO PROTECT THE PUBLIC REVENUES.

SEC. 5874. Any sheriff, collector of revenues or constable, or other officer collecting moneys belonging to the State of Arkansas, or to any county therein, who shall fraudulently state his account for settlement, and thereby deprive the State of Arkansas, or any county therein, of its just revenues; or any county clerk who shall keep fraudulent accounts against the collector or against the county treasurer, or shall make fraudulent and false additions of the tax-books, thereby concealing the true value of the same; or any county treasurer who shall keep fraudulent accounts of the county revenues coming to his hands, and by any of said fraudulent acts the State of Arkansas, or any county therein, shall be deprived of its just revenues, the officer so offending, upon conviction, shall be removed from office.

SEC. 5875. Any county judge who shall willfully approve any false and fraudulent account made by the sheriff, collector, county clerk, treasurer or other officer collecting or holding revenues belonging to the State of Arkansas, or to any county therein, or receive a bribe for doing an unlawful act, upon conviction, shall be removed from office.

SEC. 5876. If any tax-payer in any county in this state shall have knowledge of such corruption in office, whereby the State of Arkansas, or any county therein, has been deprived of its just revenues, he shall have the right, in his own name, as a tax-payer to institute legal proceedings against such officer by a petition to the circuit judge sitting in chancery, setting forth the facts and nature of such corrupt acts, together with exhibits and proofs, and the same shall be verified by affidavit of the petitioner, and, upon ten days' notice to the defendant, the cause shall proceed as other causes, but shall be heard, tried and determined at the first court after the same shall have been filed, provided the required notice shall have been given.

SEC. 5877. The proceedings authorized by this act shall be summary; but if it shall appear to the court that the ends of justice require it, a continuance may be granted to either party to the next term of the court, but not thereafter; and the party to whom the continuance is granted shall be required to enter into additional bond, the amount to be fixed and the security to be approved by the court.

SEC. 5878. Upon such trial, if it shall appear that the official acts of such officer are corrupt and fraudulent, and by such acts and doings he shall have defrauded the State of Arkansas, or any county therein, of its just revenues, a decree shall be entered against him, ousting him of his said office, and declaring the same to be vacant, and for all moneys which he may have unlawfully detained; but if upon the hearing of the said cause it shall appear that the defendant is not guilty, and has not committed the fraudulent acts complained of, and that the state and the county have not been deprived of their revenues as complained of by the petitioner, a decree shall be entered according to the facts, and also a decree shall be entered against the petitioner and

his securities for any sums of money which the defendant may have actually lost by reason of said proceeding.

SEC. 5879. Before any such cause shall be heard, the petitioner shall enter into bond to the defendant, with security, to be approved by the circuit judge, in a sufficient sum to pay any damage that the defendant might sustain by said proceedings.

SEC. 5880. Nothing in this act contained shall preclude the State of Arkansas from prosecuting said county officers, or others, for the acts complained of under any of the criminal laws of this state. *Act March 18, 1879.*

CHAPTER CXXX.

RIVER TRADERS (*).

SECTION

5881. Who declared to be.

5882. Must obtain license.

5883. License, how obtained and cost of.

SECTION

5884. When collector to demand payment for license, etc.; arrest and trial on refusal to pay.

5885. License not to authorize sale of liquors.

SECTION 5881. Whoever shall deal in selling of goods, wares and merchandise and produce other than the growth, produce or manufacture of this state (†), by going from place to place on the navigable streams within or bordering on this state, in boats of any kind, to sell the same, is declared to be a river trader.

SEC. 5882. Every river trader shall, before he commences business in this state, pay for and take out license for the privilege of trading as hereinafter provided.

SEC. 5883. Every river trader desiring to trade in this state shall apply to the collector of the revenue of the county, and, on paying to such collector the sum of one hundred dollars as a state tax, and the sum of one hundred dollars (**) as a county tax, he shall receive from such collector a license to trade for the term of twelve months, which license shall authorize such trader to carry on his business within the limits of such county.

SEC. 5884. It shall be the duty of the collector of the county where any river trader shall stop for the purpose of trading, without having first obtained license as hereinbefore provided, to call upon such river trader and demand payment of the amount for such license, and his fees and mileage for collecting the same, and, upon the failure of such river trader to pay said sums, the collector shall seize and detain such boat, and shall arrest such river trader and carry him before the nearest justice of the peace, who shall, without delay, inquire whether or not such trader has been guilty of a viola-

(*) See SECS. 1938-1940.

(†) A similar statute has been held unconstitutional. See *State v. McGinnis*, 37-362.

(**) But see SECS. 5588, 5596.

tion of the provisions of this act, and, if found guilty, such trader shall be adjudged to pay the amount for such license and all costs of prosecution, and the boat and goods so seized by the collector, or so much thereof as may be necessary, shall be sold to pay such judgment; and, if found not guilty, he shall be discharged at the cost of the state. *Provided*, that the state or defendant may appeal from the judgment of the justice of the peace to the circuit court.

SEC. 5885. No river trader shall be authorized to sell any spirituous or vinous liquors by virtue of his license. *Act March 6, 1875, secs. 1-4, 9.*

CHAPTER CXXXI.

ROADS AND HIGHWAYS (*).

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PUBLIC HIGHWAYS.

SECTION 5886. All roads heretofore laid out in pursuance of law, and all roads heretofore laid out by the United States, and all public roads known as

(*) See "Bridges on Public Roads," secs. 497-503.

military roads, which have not been vacated according to law, are hereby declared public highways. *Act March 23, 1871, sec. 1.*

SEC. 5887. All public roads on which the several county courts have, from time to time, appointed overseers to work the same, and directed that hands should be apportioned therefor, shall be declared and deemed to be public roads, without regard to any informality of the several county courts, or either of them, by which they were ordered to be declared public roads (a). *Act Feb. 18, 1859.*

SEC. 5888. All roads and highways established by any of the county courts of this state since the first day of November, 1865, as public roads, and all public roads upon which overseers have been appointed by any of the county courts since the first day of November, 1865, are hereby declared public roads and highways. *Act July 11, 1868.*

COUNTY COURT—POWERS AND DUTIES OF.

SEC. 5889. All public roads and highways shall be laid out, opened and repaired agreeably to the provisions of this act, and the county court of each county shall have full power and authority to make and enforce all orders necessary as well for establishing and opening new roads as for changing and vacating any public road, or part thereof (b).

SEC. 5890. The county court of each county, at the first term thereof after the passage of this act, shall lay off and divide the county into such districts as may be deemed convenient and proper, particularly defining the boundaries of such districts (c).

SEC. 5891. The county court of each county, at the first term thereof after the first day of January, 1873, and biennially thereafter, shall appoint one overseer for each road district, who shall serve two years (d).

SEC. 5892. The county court shall have full power and authority to change the boundary lines of road districts, and to form new road districts whenever it shall appear necessary, convenient and proper; and to lay off and divide the county into road districts, in the manner prescribed by this act, whenever it appears that the same has not been done according to the provisions of this act.

SEC. 5893. When any new road district shall be established, or when any vacancy in the office of overseer of any road district shall occur, the county court shall appoint an overseer for such district, or fill such vacancy, as the case may be, whose term of service shall expire at the regular term designated for appointing overseers.

OVERSEERS.

SEC. 5894. It shall be the duty of the clerk of the county court to make out and deliver to the sheriff written notices to all overseers appointed as aforesaid, within fifteen days after their appointment, informing them of their

(a) As to what are "public roads," see *State v. Lenay*, 13—405.

(b) As to rights of the public and of owner of the fee in land dedicated to the public for a highway or street, see *Taylor v. Armstrong*, 24—102.

(c) None but public roads are included in these districts; overseers are not charged with the care of private roads. *State v. Hagood*, 23—553.

(d) The order districting a road and the order appointing the overseer may be included in the same record entry. *State v. Hester*, 21—193.

appointment and describing the bounds of their respective districts and the roads therein; and the sheriff shall immediately deliver such notices to the persons to whom they may be directed (e).

SEC. 5895. If any overseer shall refuse to accept his appointment, the sheriff shall return the notice of such appointment to the clerk of the county court, noticing such refusal on the back of the notice; and, if the overseer shall accept his appointment, the sheriff shall notify the clerk of such acceptance.

SEC. 5896. It shall be the duty of the sheriff to make return of such acceptance or refusal within twenty days after the delivery of such notice to him.

SEC. 5897. If any overseer shall fail or neglect to notify the sheriff of his county, in writing, of his refusal to accept his appointment within ten days after he has received notice thereof, he shall be deemed to have accepted the same.

SEC. 5898. If the clerk shall fail to make out and deliver to the sheriff any of the notices required by the preceding provisions of this act within the time prescribed, he shall be fined by the county court in any sum not less than ten dollars; and the sheriff shall incur the like penalty for any failure to deliver any of such notices within the time herein prescribed.

SEC. 5899. If any person shall refuse to accept the appointment of overseer of any road district, he shall be fined by the county court in the sum of ten dollars.

SEC. 5900. It shall be the duty of each clerk to lay before the county court, at the first term thereof after said notices have been made out and delivered, an abstract of the names of all overseers of all road districts who have refused to accept their appointments.

SEC. 5901. The county court, on being satisfied that any person appointed an overseer of a road district ought not to have been appointed, may remit the fine imposed on him for refusing to accept such appointment at the first term thereof held after such fine has been imposed.

Duties and Powers of Overseers.

SEC. 5902. It shall be the duty of each overseer of road districts, so far as he can without a violation of the provisions of this act, to cause all public highways in his district to be kept well cleared and in good repair, and to cause all stumps to be cut low, so as to afford at all times a free and safe passage to wagons, carriages and horsemen along such road, and to cause all causeways and bridges to be made whenever the same shall be necessary, and to keep the same in repair; and to cause to be erected and kept in repair a guide-post at the forks and crossing-places of every road and highway in his district, with plain inscription thereon, in large letters and figures, giving the distances to the most noted places to which such road may lead (f).

SEC. 5903. Whenever any public highways shall be obstructed by fallen

(e) As to proof of appointment and notice to overseer, see *State v. Moore*, 23—550; *State v. Stroope*, 20—202. Proof that an individual acted as overseer is sufficient, on the trial of an indictment for failing to work the road, and the production of the record of his appointment is unnecessary. *James v. State*, 41—451.

(f) See SECS. 1863 and 1864. The latter fixes the penalty for a neglect of the duties to be performed by overseers under this section and also under section 5907.

timber, or in any other manner (g), and when any bridge or causeway shall be destroyed or become impassable or dangerous to travelers, it shall be the duty of the overseer to cause such obstruction to be removed and to have such bridge or causeway rebuilt with as little delay as possible; and for that purpose he may call out the persons liable to be called out by him to work on roads, or as many of them as may be necessary.

SEC. 5904. It shall be the duty of every overseer of road districts to warn every person apportioned to him to work on the public highways in his road district not exceeding ten days in each year during the term of his appointment.

SEC. 5905. The warning required may be given personally or by leaving a written notice at the usual place of abode of the person warned, in some conspicuous place, by the overseer or by some person under his direction by whom such warning can be proven, at least three days previous to the time appointed to work by such overseer. In said warning, the time and place when and where such person so warned is required to appear, and the kind of tools such person is desired to bring or use, must be stated at the time of warning.

SEC. 5906. Whenever it shall happen, in consequence of sickness, absence from home or unavoidable accident, that any person shall necessarily be prevented from obeying any lawful warning, such person shall be warned again to work on the public highway in the manner prescribed by this act, by the overseer authorized to warn him. Such warning must require such person to work on a public highway in the district of said overseer.

SEC. 5907. If any person subject to road duty shall have had at least three days' actual notice according to this act (h), and failed or neglected to pay for the full time he is lawfully warned to work, shall refuse or neglect to attend by himself or substitute to the acceptance of the overseer by whom he shall have been lawfully warned on the day and at the time and place directed by said overseer; or, having attended, shall refuse to obey the directions of said overseer, or shall spend so much of the time which he is lawfully warned to work in idleness or inattention to the duties assigned him, or behaves himself in such manner as disturbs, annoys or has a tendency to hinder others from working, he shall be fined for every such offense or willful neglect, not less than ten nor more than twenty-five dollars; and it is hereby made the duty of such overseer to make special report of all persons to the grand jury of the county at the next term of the court after such neglect or offense, or to some justice of the peace of the county.

SEC. 5908. The overseer of any road district shall have full power to put down on the list of his hands the names of all persons subject to work on public highways that he may find in his road district, and who have not been apportioned to any other overseer, and such persons shall thereupon be subject to perform all the duties required of those already apportioned to said overseer when he shall have put down their names and required them to perform the same duties.

SEC. 5909. The overseer of each road district, or any person under him, for the purpose of building any bridge or causeway, shall have power and

(g) As to when a person may be enjoined from obstructing a public road, see *Draper v. Mackey*, 35—497.

(h) See *Jones v. State*, 42—93; *State v. Snyder*, 41—226.

authority to enter on the nearest uncultivated lands unincumbered by a crop, and cut and haul any timber and quarry and haul such rock and ground as may be necessary for that purpose (i).

SEC. 5910. Unless the owner or his agent shall first consent to the cutting of timber and quarrying of rock and the hauling of ground, it shall be the duty of the overseer to call on two householders to value the materials about to be used, and, if the owner of such materials or his agent shall see proper, he may choose two other householders to unite with such as may be appointed by the overseer; and, if they can not agree, the four shall choose a fifth as an umpire, and the five, or a majority of them, shall make out their award under oath, and in writing and over their signatures.

SEC. 5911. Such award shall be transmitted to the clerk of the county court, who shall file and preserve the same, and such award shall be final and conclusive of the amount of damages sustained by such person, and the amount so awarded shall be paid to the owner of such materials out of the county treasury, and the county court shall allow the same.

SEC. 5912. The overseer of every road district shall have power to commute personal labor for wagons, teams or necessary implements which may be required on the road.

SEC. 5913. Each overseer shall be authorized to appoint, from the hands apportioned to him, one person to warn the other hands so apportioned, and the person so appointed shall be exempt from performing any road labor during the time for which he was required by the overseer to warn the hands to labor on any road or public highway.

LABOR ON HIGHWAYS.

SEC. 5914. All male persons between the ages of eighteen and forty-five years, who have resided in the township in which they are warned to work ten days previous to the time they are warned, shall be subject to work on any public highway within the respective townships in which they may reside (j).

SEC. 5915. For the purposes provided in the preceding section, the residence of any person who has a family shall be held to be where his family resides, and the residence of any other person shall be held to be where he boards.

SEC. 5916. All persons who are unable to perform labor by reason of physical disability shall be exempted from working on any roads.

SEC. 5917. No person shall be compelled to work on public highways more than ten days in any one year, nor more than four days at any one time or in any one month.

SEC. 5918. Each person liable to work on any public highway shall furnish his own tools. *Act March 23, 1871, secs. 2-28.*

SEC. 5919. Each person liable to work on public roads or highways who

(i) See SECS. 497, 501, 503.

(j) They are also subject to be warned to work on bridges of the second and third class on public roads. See SEC. 503. When a municipal corporation, by ordinance, requires persons between the ages of eighteen and forty-five years, resident within its limits, to work upon the streets, etc., of such corporation, they are not liable to work on public roads outside thereof. See SEC. 783. Mail riders are not exempt from labor on highways. *James v. State*, 41—451. A defendant can not excuse himself for a failure to work the road by showing that, after he was warned, he went into another district and worked there. *Id.*

shall, on or before the day on which he is lawfully warned to work, pay to the overseer by whom he is lawfully warned the sum of one dollar in lawful money of the United States for each day he is warned to work, or shall, after the same rate, pay to said overseer for any part of the time he is warned to work, or shall furnish a substitute who is accepted by the said overseer, and shall labor for any portion of the time he is so warned to work, shall be exempt and discharged from labor on all roads and highways for so much of the time he is warned and liable to work as he shall pay or his substitute shall labor. *Ib.*, sec. 29, as amended by act March 11, 1879.

SEC. 5920. All moneys paid to any overseer under the preceding section shall be faithfully applied by him to the improvement and repairing of public highways in his district, in a manner most advantageous to the public (k).

SEC. 5921. All persons subject to work on public highways shall labor in accordance with and under the direction of the overseer of the district in which they are liable to work.

APPORTIONING JUSTICE.

SEC. 5922. It shall be the duty of the county court, at the time fixed for appointing overseers of road districts, to designate one justice of the peace for each township, who shall serve the same time overseers appointed at the same time are required by this act to serve, if his term of office so long continue, otherwise, until the expiration of his term of office, whose duty it shall be to apportion the persons in the township for which he may be appointed liable to work on public highways among the different overseers of the township, within thirty days after legal notice of his appointment, in such manner as to him may seem just and equitable. The justice of the peace may apportion hands to each overseer of the township for which he may be appointed every six months, if he deem it necessary.

SEC. 5923. Such justice shall make out two lists of the hands apportioned to each overseer, and shall deliver one to the overseer, and shall file the other in the office of the clerk of the county court (l).

SEC. 5924. Every justice of the peace appointed as aforesaid shall be notified of his appointment in the same manner as overseers of road districts are required to be notified of their appointments.

SEC. 5925. If any justice of the peace appointed as aforesaid shall refuse to accept such appointment, and discharge the duties thereof, he shall be fined by the county court in any sum not less than ten dollars.

SEC. 5926. Whenever it shall appear to the county court that the office of any apportioning justice of the peace for any township in the county is vacant, it shall be the duty of such court to appoint an apportioning justice of the peace for such township, whose term of service shall expire at the regular term of said court for appointing the apportioning justice of the peace.

(k) See SEC. 5954, and note (s) thereto.

(l) The list filed in the clerk's office is admissible evidence of the apportionment, though not endorsed "filed" by the clerk. *James v. State*, 41—451.

LAYING OUT AND VACATING.

SEC. 5927. All applications for laying out, viewing, reviewing, or altering or vacating any county road, shall be by petition to the county court, signed by at least ten freeholders of the county, and one or more of the signers to such petition shall enter into bond, with sufficient security, payable to the State of Arkansas for the use of the county, conditioned that the person or persons making such application for a view or review, alteration or vacation of any road shall pay into the treasury of the county the amount of all cost and expense accruing on such view, review, alteration or vacation. In case the prayer of said petitioners shall not be granted, or when the proceedings had in pursuance thereof shall not be finally confirmed and established, and, on neglect or refusal of the persons so bound, after a liability shall have accrued, to pay into the treasury, according to the tenor of the bond, all costs and expenses that shall have accrued, the clerk of the county court shall deliver such bond to the prosecuting attorney of the district, whose duty it shall be to collect and pay over the same to the county treasury; and, in all cases of contest, the court having jurisdiction of the case shall have power to render judgment for costs, according to justice, between the parties.

SEC. 5928. All petitions for laying out, altering or vacating any county road shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

SEC. 5929. Previous to any petition being presented for a county road, or for the alteration or vacation of a county road, notice thereof shall be given by publication in some newspaper published in the county, if one there be; and, if there be no newspaper published in the county, then by advertisements set up in three public places in each township through or into which any part of said road is designed to be laid out, altered or vacated, stating the time when such petition is to be presented, and the substance thereof; which notice shall be duly authenticated and presented with the petition to the county court.

VIEWERS.

SEC. 5930. On presentation of the petition and proof of notice of publication as aforesaid, and the county court being satisfied that proper notice has been given in accordance with the provisions of this act, said court shall appoint three disinterested citizens of the county as viewers, who shall also be a jury to assess and determine the compensation to be paid in money for the property sought to be appropriated, without deduction for benefits to any property of the owners; and they shall also assess and determine what damages each owner of the lands over which the road is to run shall suffer by the opening and constructing of said road (m).

SEC. 5931. Said viewers may call to their assistance a surveyor to assist them in laying out and surveying or altering any road they may be ordered by the county court to view, survey and lay out or alter.

SEC. 5932. The county court shall issue its order directing said viewers to proceed, on a day to be named in said order, or, on their failing to meet on said day, within five days thereafter, to view, survey and lay out or alter said

(m) See art. II, sec. 22, Const.

road, and also determine whether the public convenience requires that such road, or any part thereof, shall be established. They shall also report what width said road should be to promote public convenience. *Provided*, that the county courts shall have power to determine what shall be the width of each road in their respective counties.

SEC. 5933. It shall be the duty of one of the petitioners to give at least five days' notice in writing to the owner or owners, or their agents, if residing within the county, or, if such owner be a minor, idiot or insane person, then to the guardian of such person, if a resident of said county, through whose land said road is proposed to be laid out and established; and also five days' notice to the viewers named in the order of the county court of the time and place of meeting as specified in said order; and it is hereby further made the duty of the principal petitioner, if said road is proposed to be laid out on or through any land owned by non-residents of the county, to cause notice to such non-residents of the county to be published for two consecutive weeks in some newspaper published in the county; and, if there be no newspaper published in the county, then notice shall be given to such non-resident by posting a notice of the time and place of meeting of the viewers as specified in the order of the county court, and also the substance of said petition for said road, upon the door of the office of the clerk of the county court for at least two weeks before the time fixed for the meeting of said viewers.

SEC. 5934. It shall be the duty of the viewers to meet at the time and place specified in said order, or within five days thereafter, and, after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointments respectively, they shall take to their assistance two suitable persons as chain-carriers and one as marker, and proceed to view, survey and lay out or alter said road as prayed for in the petition, or as near the same as, in their opinion, a good road can be made at reasonable expense, taking into consideration the ground, convenience and inconvenience and expense which will result to individuals as well as to the public if such road shall be established, or any part thereof, or altered as prayed for.

SEC. 5935. Said viewers shall assess and determine the damages sustained by any person through whose premises the said road is proposed to be established, mentioning the damages to each tract separately.

SEC. 5936. Said viewers shall make and sign a report in writing, stating their opinion in favor of or against the establishment, alteration or vacation of such road, or any part thereof, and which shall set forth the reason for the same; it shall state the commencement and termination, courses and distances of said road, so that the said road can be readily found and located; and the said report shall state the value of the property sought to be appropriated for the establishment of said road and the amount of damages, if any, and to whom, which by them have been assessed, and which would accrue by the establishing and opening of said road.

SEC. 5937. The county court, on receiving the reports of the viewers aforesaid, shall cause the same to be read publicly on the second day of the term, and if no legal objections shall be made to said reports, and the court is satisfied that such road, or any part thereof, will be of sufficient importance to the public to cause the damages and the compensation which have been assessed as aforesaid to be paid by the county, and that the amount so assessed is reasonable

and just, and the report of the viewers being favorable thereto, the court shall order the same to be paid to the person or persons entitled thereto from the county treasury (n), and thenceforth the same shall be considered a public road; but, if the court shall be of the opinion that the road is not of sufficient public utility for the county to pay the compensation and damages assessed as aforesaid, and the petitioners refuse to pay the compensation and damages, then such road shall not be declared a public highway or road, and the costs accruing by reason of the application shall be paid by the petitioners, as herein provided. If the report of the viewers be against such proposed road or alteration, or if, in the opinion of the court, the same is not of public utility, then no further proceedings shall be had thereon, and the obligor or obligors in the bond securing costs and expenses shall be liable for the full amount of such costs and expenses.

SEC. 5938. After any such road has been established and declared a public highway, the county court shall cause an order to be issued to the overseer or overseers of the proper road district or districts directing said road to be opened.

REVIEW.

SEC. 5939. After the viewers of any county road shall have made return in favor of the same, and before said road shall have been established, any citizen of the county whose lands are affected by said road may apply to the county court by petition for a review of said road, and the court, on being satisfied from the petition that a review should be granted, shall appoint three disinterested freeholders of the county to review said road, and issue their order to said reviewers directing them to meet at a time and place therein specified, or within five days thereafter, and, after taking the oath required of viewers, shall proceed to examine the route surveyed for said road by the former viewers, and make a report in writing to the court, stating their opinion in favor or against the establishment of said road, or any part thereof, and their reasons therefor. The petitioner for review shall cause at least five days' notice to be given to the principal petitioner for said road of the time and place of meeting of said reviewers. If a review be granted, then no further proceedings shall be had until the reviewers shall have reported their action to the county court. If the report of the reviewers be in favor of said road, the same shall be established, recorded and opened, and the person bound for the same shall pay into the county treasury the amount of the costs of such review; but if the report be against the establishment of said road, no further proceedings shall be had thereon before the court, and the persons executing the first bond shall pay into the county treasury the costs and expenses of the views, survey and review of said road.

SEC. 5940. An appeal from the final decision of the county court for a new county road, or for vacating, altering or reviewing any county road, shall be allowed to the circuit court. *Provided*, that notice of such appeal be given by the appellant during the same term of the county court at which said decision was made; and the appellant shall, within ten days thereafter, enter into bond,

(n) The owner of land through which a public road has been laid out has no right to obstruct it, though no compensation has been made to him. He should have resisted the application for it in the county court, or resorted to proper means to have it vacated. *Draper v. Mackey*, 35—497.

with good and sufficient security, to be approved by the clerk of the county court, for the payment of all costs and expenses arising from such appeal. Minors, idiots and lunatics, by their guardians, may appeal without giving bond. The circuit court may order another view or review of such road, or make such other orders as the justice of the case demands. The county court, after notice of appeal has been given, shall not issue any order in the premises until after ten days shall have expired from the time of making the decision appealed from; if the appeal shall not have been perfected agreeably to the provisions of this act, the clerk shall issue the order for the opening of the road. The decisions of the circuit court on petitions for roads taken into said court by appeal shall be recorded in the record of said county court appealed from.

CHANGE OF ROAD.

SEC. 5941. If any person through whose lands a public road is established shall be desirous of turning said road through any other part of his land, such person shall, by notice and petition, and conforming in all things in relation thereto to the provisions of this chapter, apply to the county court to permit him to turn said road through any other part of his land, on as good ground and without increasing the distance to the injury of the public; and, upon presentation of such petition, and being satisfied that said petitioner has complied with the provisions of this act in all things, the court shall appoint three disinterested citizens of the county as viewers of said road, who may, if they deem necessary, take to their assistance a competent surveyor, and proceed to view the ground over which the said road is proposed to be turned, and ascertain the distance which said road will be increased or shortened by such proposed alteration, and make out a report in writing stating the several distances so found, together with their opinion as to the utility or practicability of making said alteration. If said viewers shall report to the county court that the prayer of the petitioner is reasonable, and the alteration will not place the road on worse ground or increase the distance to the injury of the public, they shall, upon receiving satisfactory evidence that the proposed new road will be opened by the petitioner a legal width, and in all respects made as good as the old road was for the convenience of travelers, and if, in their opinion, the same shall be just and reasonable, declare said new road a public highway. The person desiring the alteration aforesaid shall pay all costs of the view, survey and return, with the cost incident thereto. No damages shall be allowed under the provisions of this section, by reason of any such change, to any petitioner by the viewers appointed as aforesaid (o).

VACATING ROADS.

SEC. 5942. When any county road, or any part of any county road, shall be considered useless, any ten citizens residing in that portion of the county may make application by petition to the county court to vacate the same, setting forth in the petition the reason why the same ought to be vacated, which

(o) One can not change a public road running across his land without authority of the county court. *McKibbin v. State*, 40—480.

petition shall be publicly read at a regular term of the county court, with the proof of notice and publication required by this act; and no further proceedings shall be had thereon until the next regular term of the court. If no objections be made and filed, the county court may declare said road vacated, or any part thereof that it may deem necessary. If objection be made in writing, the county court shall appoint three viewers to view said road, who shall proceed, after taking the oath or affirmation required by this act, to view the road as aforesaid, and make written report of their opinion thereon, and their reason for the same, to the county court. If said viewers shall report in favor of vacating such road, or any part thereof, the court may, if it deems the same reasonable and just, declare said road, or any part thereof, vacated, agreeably to the report of the viewers (p). The costs thereof and expenses incident thereto shall be paid by the petitioners, unless the county court shall order the same paid out of the county treasury.

NEW ROAD WHERE OLD ROAD INJURED.

SEC. 5943. When any county road may be injured or destroyed by the washing of any lake, river or creek, it shall be the duty of the overseer or overseers of the road district or districts in which such injury or destruction may occur to immediately notify the county court in writing of the nature and extent of such injury; and, if said court shall be satisfied that such road has been injured or destroyed to such an extent as to inconvenience the traveling public, the court shall appoint three viewers, who may, if in their judgment it is necessary, take with them a competent surveyor, and proceed to view and survey a new road upon such ground as will accommodate the traveling public. Such viewers shall determine the compensation to be allowed the owners of the property sought to be appropriated, at its true value, and the damages occasioned by such new road, and shall make a report of their doings in the manner pointed out in this act as the duties of viewers of new roads. Appeals may be taken from the appointment and orders of said court, and from the assessment allowed by the viewers as a jury to the owner or owners of property, in the manner provided by this act, within the time allowed by law, after the first regular term of the court thereafter held. The appointment of viewers and order of said court herein provided shall be recorded in the records of the court. The court shall be governed in the reception, approving and recording of said report of viewers, in all respects, as is prescribed in the case of new roads, except no notice of the destruction or injury to the road shall be required, except as required by this section. All costs, damages and expenses arising under the provisions of this section shall be paid out of the county treasury.

PRIVATE ROAD (q).

SEC. 5944. When the lands, dwelling-house or plantation of any person is so situated as to render it necessary for the owner thereof to have a private

(p) Where a county court regularly makes an order vacating an old road and establishing a new public highway in lieu thereof, it can not, at a subsequent term, vacate the order and re-establish the old road, without the notice, petition and review prescribed by law. *Kriff v. Conner*, 10—241.

(q) See *Roberts v. Williams*, 13—355; *Roberts v. Williams*, 15—13.

road from such lands, dwelling-house or plantation to any public road or navigable water-course over the lands of any other person, and such person shall refuse to allow such owner such private road, it shall be the duty of the county court, on the petition of such owner, and it appearing that he hath given to such person twenty days' notice of such intended application, and that it is necessary for petitioner to have such private road, and that said person will not allow the same, and on said petitioner having first deposited with the clerk of said court a sum of money sufficient to pay all costs and expenses accruing on account of said petition, notice, view and survey of said private road, to appoint the viewers to lay off said road. Such viewers shall take the same oath, and shall be governed in all respects as viewers appointed to public roads are governed. They shall examine the route proposed for such road, and any other route which they may deem proper, and, if they, or a majority of them, shall be of opinion that a private road is necessary and proper, as prayed in the petition, they shall lay out the same in such manner as to produce the least inconvenience to the parties through whose land the same shall pass, and shall make a written report to the county court, describing the route of the road and the land through which the same shall pass, naming the owner thereof, if known, and the damages sustained by each owner of lands through which such road passes, which damages shall include the value of the land of each owner sought to be appropriated. Such report shall be recorded on the records of said county court.

SEC. 5945. If, upon the return of the viewers, the court shall be of the opinion that it is necessary for the petitioner to have said road from his said lands, dwelling-house or plantation to said public road or navigable water-course, and said petitioner shall pay all costs and expenses accruing on account of said petition for such private road, and all things relating thereto, and following therefrom, including the view and survey of said road, and said damages sustained by each owner of the lands over which such road passes, an order shall be made establishing the same as a private road, not exceeding fifteen feet wide, and the person applying for such road may proceed to open the same.

FINES.

SEC. 5946. If any person shall be appointed by the county court as a viewer, reviewer, or by the viewers or reviewers, as a surveyor of any road, and shall refuse or neglect to perform the duties required by this act, without making satisfactory or legal excuse therefor, he shall be fined in any sum not less than twenty nor more than fifty dollars.

SURVEYOR.

SEC. 5947. It shall be the duty of every surveyor, when called on by any viewers or reviewers, to survey any road they may be required to view or review, lay out, establish or alter, and to furnish all courses, bearings, distances, plats and surveys of roads required by them to be laid out, established or altered, as viewers or reviewers, when demanded by them.

COMPENSATION FOR SERVICES.

SEC. 5948. All persons required to render services under the provisions of this act, as viewers or reviewers, shall receive one dollar and fifty cents per day; as chain-carriers, one dollar and fifty cents per day; as markers, one dollar and fifty cents per day; surveyors, five dollars per day, for each day necessarily employed therein, to be charged as costs and expenses, paid out of the county treasury. The amount due to each person, and the number of days employed, shall be certified under oath by the viewers or reviewers, as the case may be. The county shall be reimbursed for the payment so made, and for all other necessary expenses incident to such proceedings, by the petitioner, as herein-before provided. The clerk of the county court shall receive such fees as by law he may be entitled to, to be taxed as costs and paid as herein provided.

ROAD TAX.

SEC. 5949. If, in the opinion of the county courts, the public highways in their respective counties can not be placed and kept in good condition under the preceding sections of this act, and that it will be necessary to levy a road tax for any year in order to place or keep said highways in such condition as the interests of the traveling public necessarily require, it shall be the duty of said courts, at the time of levying the county tax in each year, to levy a road tax on all property (r) made taxable by the laws of this state, not exceeding one mill on the dollar in any one year.

SEC. 5950. Collectors of state and county taxes shall collect the road tax so levied in the same manner that other taxes are now collected; and, if the same be not paid, such property shall be sold in the same manner that property is now sold for the non-payment of taxes.

SEC. 5951. The collector shall pay into the county treasury the amount of road tax collected by him, taking the treasurer's receipt for the same, as so much money paid on account of roads.

SEC. 5952. It shall be the duty of the treasurer to keep a separate account of all moneys received on account of road tax, receipting therefor to the collector, and at the proper term of the county court, annually, to present his account for all moneys received and disbursed on account of roads, for settlement in the same manner as the other county receipts and expenditures now are.

SEC. 5953. The county courts shall have power, and it is hereby required, to appropriate all moneys collected under this act as road tax to the repair and opening of roads in the several road districts in the county when the same may have been collected; and to order and direct the overseers of each road district wherein the opening or repairing of roads is to be done to make the contract for such opening or repairing in such manner as said court may direct, and to superintend and direct the same; and, when the same is done, to make report thereof, under oath and in writing, to said court; and, when it appears that said contract has been faithfully performed, said court shall direct the clerk thereof to draw a warrant, in favor of the party with whom such contract was made,

(r) This includes the taxable property within the limits of municipal corporations in the county. *Fletcher v. Oliver*, 25—289.

on the county treasurer for the amount due on the contract, wherein said treasurer shall be directed to pay said amount out of the road fund in his hands. The county courts shall make appropriations for the repair or opening of such roads, or parts thereof, in their respective counties as to them may seem just and equitable.

SEC. 5954. The several overseers of road districts who may receive money from any person subject to work on public highways in lieu of labor shall annually report, under oath, to the county court all such moneys received by them and the disposition thereof, and their accounts and vouchers for so much of the same as they have disbursed; and any overseer who shall neglect or refuse to comply with this section may be compelled to do so by the county court by fine and attachment (s).

DAMAGES FOR LANDS TAKEN.

SEC. 5955. No part of this act shall be so construed as to entitle any person or persons whose lands, or any part thereof, may be appropriated under this act to a public highway to any further compensation and damages than the value of property appropriated, and damages sustained by the owner thereof by reason of a road or roads being established on and over the same, over and above such value. *Act March 23, 1871, secs. 30-38, 42-71.*

(s) A penalty for violating this section or section 5920 is fixed by SEC. 1644.

CHAPTER CXXXII.

SALARIES (a).

SECTION	SECTION
CONSTITUTIONAL PROVISIONS.	5998. Salary of judge of Clark County.
5956. General assembly to fix salaries and number of employes in state departments.	5999. of Clay County.
5957. Maximum salaries of state officers, etc.	6000. of Cleburne County.
SALARIES OF STATE OFFICERS.	6001. of Columbia County.
5958. Salary of governor.	6002. of Conway County.
5959. secretary of state.	6003. of Craighead County.
5960. treasurer.	6004. of Crawford County.
5961. auditor.	6005. of Crittenden County.
5962. commissioner of state lands.	6006. of Cross County.
5963. attorney-general.	6007. of Dallas County.
5964. judges of supreme court.	6008. of Desha County.
5965. judges of circuit and chancery courts.	6009. of Dorsey County.
5966. superintendent of public instruction.	6010. of Drew County.
5967. Traveling expenses of superintendent of public instruction.	6011. of Faulkner County.
5968. Salary of his clerk.	6012. of Franklin County.
5969. prosecuting attorneys.	6013. of Fulton County.
5970. Act not to apply to salaries during existing terms.	6014. of Garland County.
5971. Salary of reporter of supreme court.	6015. of Grant County.
5972. clerk of supreme court.	6016. of Greene County.
5973. chaplain to penitentiary.	6017. of Hempstead County.
5974. physician to penitentiary.	6018. of Hot Spring County.
SALARIES OF EMPLOYES IN STATE DEPARTMENTS, ETC.	6019. of Howard County.
5975. Salary of governor's private secretary and janitor.	6020. of Independence County.
5976. clerk in governor's office.	6021. of Izard County.
5977. clerks in secretary of state's office.	6022. of Jackson County.
5978. cashier and clerks in treasurer's office.	6023. of Jefferson County.
5979, 5980. clerks in office of commissioner of state lands.	6024. of Johnson County.
5981. clerk in office of attorney-general.	6025. of Lafayette County.
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COMPENSATION OF SPECIAL JUDGES.	6027. of Lee County.
5985. Compensation of special judges of supreme court.	6028. of Little River County.
5986. of circuit court.	6029. of Lincoln County.
5987. of county and probate courts, when especially appointed.	6030. of Logan County.
SALARIES OF COUNTY AND PROBATE JUDGES.	6031. of Lonoke County.
5988. How to be paid.	6032. of Madison County.
5989. Salary of judge of Arkansas County.	6033. of Marion County.
5990. of Ashley County.	6034. of Miller County.
5991. of Baxter County.	6035. of Mississippi County.
5992. of Benton County.	6036. of Monroe County.
5993. of Boone County.	6037. of Montgomery County.
5994. of Bradley County.	6038. of Nevada County.
5995. of Calhoun County.	6039. of Newton County.
5996. of Carroll County.	6040. of Ouachita County.
5997. of Chicot County.	6041. of Perry County.
	6042. of Phillips County.
	6043. of Pike County.
	6044. of Poinsett County.
	6045. of Polk County.
	6046. of Pope County.
	6047. of Prairie County.
	6048. of Pulaski County.
	6049. of Randolph County.
	6050. of St. Francis County.
	6051. of Saline County.

(a) When an office is created by the constitution, but the compensation is left to the discretion of the legislature, it may be increased or diminished so as to affect the incumbent, whether it be by fees or by salary. *Humphrey v. Sadler*, 40—100.

SECTION

6052. Salary of judge of Scott County.
 6053. of Searcy County.
 6054. of Sebastian County.
 6055. of Sevier County.
 6056. of Sharp County.
 6057. of Stone County.
 6058. of Union County.
 6059. of Van Buren County.

SECTION

6060. Salary of judge of Washington County.
 6061. of White County.
 6062. of Woodruff County.
 6063. of Yell County.
 6064. Judges may order clerks to issue quarterly warrants for their salaries.
 6065. Orders previously made legalized.

CONSTITUTIONAL PROVISIONS.

SECTION 5956. The general assembly shall fix the salaries and fees of all officers in the state; and no greater salary or fee than that fixed by law shall be paid to any officer, employe or other person, or at any rate other than par value; and the number and salaries of the clerks and employes of the different departments of the state shall be fixed by law. *Art. XVI, sec. 4, Const.*

SEC. 5957. The governor, secretary of state, auditor, treasurer, attorney-general, judges of the supreme court, judges of the circuit court, commissioner of state lands and prosecuting attorneys shall each receive a salary, to be established by law, which shall not be increased or diminished during their respective terms, nor shall any of them, except the prosecuting attorneys, after the adoption of this constitution, receive to his own use any fees, costs, perquisites of office or other compensation; and all fees that may hereafter be payable by law, for any service performed by any officer mentioned in this section, except prosecuting attorneys, shall be paid in advance into the state treasury. *Provided*, that the salaries of the respective officers herein mentioned shall never exceed per annum :

For governor, the sum of.....	\$4,000
For secretary of state, the sum of.....	2,500
For treasurer of state, the sum of.....	3,000
For auditor of state, the sum of.....	3,000
For attorney-general, the sum of.....	2,500
For commissioner of state lands, the sum of.....	2,500
For judges of the supreme court, each, the sum of.....	4,000
For judges of the circuit courts and chancellors, each, the sum of.....	3,000
For prosecuting attorneys, the sum of.....	400

Art. XIX, sec. 11, Const.

SALARIES OF STATE OFFICERS.

SEC. 5958. The governor of the state shall receive for his salary the sum of three thousand dollars per annum.

SEC. 5959. The secretary of state shall receive for his salary the sum of one thousand and eight hundred dollars per annum.

SEC. 5960. The treasurer of state shall receive for his salary the sum of two thousand two hundred and fifty dollars per annum.

SEC. 5961. The auditor of state shall receive for his salary the sum of two thousand two hundred and fifty dollars per annum.

SEC. 5962. The commissioner of state lands shall receive for his salary the sum of eighteen hundred dollars per annum.

SEC. 5963. The attorney-general shall receive for his salary the sum of fifteen hundred dollars per annum.

SEC. 5964. The judges of the supreme court shall each receive for his salary the sum of three thousand dollars per annum.

SEC. 5965. The judges of the circuit courts and Pulaski Chancery Court shall each receive for his salary the sum of two thousand dollars per annum.

SEC. 5966. The superintendent of public instruction shall receive for his salary the sum of one thousand and six hundred dollars per annum. *Act April 3, 1879, sec. 1.*

SEC. 5967. He shall also receive a sufficient amount to defray his actual traveling expenses while engaged in the discharge of the duties of his office, not to exceed the sum of two hundred and fifty dollars. *Act Dec. 7, 1875, sec. 38.*

SEC. 5968. He shall be entitled to one clerk, who shall receive for his salary the sum of seventy-five dollars per month. *Act March 21, 1881.*

SEC. 5969. Each prosecuting attorney of this state shall receive for his salary the sum of two hundred dollars per annum.

SEC. 5970. This act shall not apply to nor affect the salaries of state officers now in office during their term of office. *Act April 3, 1879, secs. 1 and 2.*

SEC. 5971. The reporter of the supreme court shall receive for his salary, for all the duties required to be performed by him, the sum of two thousand dollars per annum. *Act March 5, 1881, sec. 3.*

SEC. 5972. The clerk of the supreme court shall receive a salary of twelve hundred dollars per annum. *Act July 13, 1868, sec. 7.*

SEC. 5973. The chaplain to the penitentiary shall receive a salary of one hundred and fifty dollars per annum. *Act Feb. 17, 1859, sec. 8.*

SEC. 5974. The physician of the penitentiary shall receive for his salary one thousand dollars per annum, payable quarterly. *Act March 21, 1881, sec. 6,*

EMPLOYES IN STATE DEPARTMENTS, NUMBER AND SALARIES OF.

SEC. 5975. The governor is hereby authorized to employ, in connection with his office, one private secretary, who shall receive a salary of sixteen hundred dollars for his services as private secretary, and adjutant-general (*), and one janitor, at a salary of twenty dollars per month. *Act Dec. 9, 1875, sec. 1, and act March 11, 1879, sec. 1.*

SEC. 5976. The governor, in addition to his private secretary, shall be entitled to one clerk, who shall receive for his salary seventy-five dollars per month. *Act March 18, 1879.*

SEC. 5977. The secretary of state is hereby empowered to employ, in connection with his office, one first clerk, with a salary of one hundred and twenty-five dollars per month; one second clerk, with a salary of one hundred dollars per month; one clerk for library department, with a salary of one hundred dollars per month, and one janitor, with a salary of twenty dollars per month.

SEC. 5978. The treasurer is hereby empowered to employ, in connection with his office, one cashier, with a salary of one hundred and fifty dollars per month; one book-keeper, with a salary of one hundred and twenty-five dollars per month, and two clerks, each with a salary of one hundred dollars per month, and one janitor, with a salary of twenty dollars per month.

(*) See SEC. 4700.

SEC. 5979. The commissioner of state lands is hereby empowered to employ, in connection with his office, one chief clerk, with a salary of one hundred and twenty-five dollars per month; and three additional clerks, each with a salary of one hundred dollars per month, and one janitor, at a salary of twenty dollars per month. *Act Dec. 9, 1875, secs. 2-4.*

SEC. 5980. The commissioner of state lands is hereby authorized to employ an additional clerk, to be paid a salary of one thousand dollars per annum. *Act March 21, 1883, sec. 2.*

SEC. 5981. The attorney-general is hereby empowered to employ such clerical force in his office as may be necessary, at an expense not to exceed sixty-six and two-thirds dollars per month. *Act March 22, 1881, sec. 1.*

SEC. 5982. The auditor is hereby empowered to employ, in connection with his office, one chief clerk, at a salary of one hundred and fifty dollars per month; one second clerk, at a salary of one hundred and twenty-five dollars per month; and two other clerks, each with a salary of one hundred dollars per month, and one janitor, with a salary of twenty dollars per month.

SEC. 5983. Said clerks and employes shall receive no other fees or salaries during the time of their employment, except as herein provided.

SEC. 5984. When said salaries are paid in treasurer's certificates, auditor's warrants or other evidences of state indebtedness, the said clerks and employes shall receive the same at par value. *Act Dec. 9, 1875, secs. 5-7.*

COMPENSATION OF SPECIAL JUDGES.

SEC. 5985. Hereafter each special judge of the supreme court, appointed under the provisions of article seven, section nine, of the constitution, shall receive, as full compensation for his services, the sum of fifty dollars for each case in his commission. When such case or cases shall be decided, the said amount shall be certified by the clerk of the supreme court after having been approved by the chief justice of said court.

SEC. 5986. Each special judge of the circuit court, elected according to the provisions of section twenty-one, article seven, of the constitution, shall receive ten dollars per day for each day he holds the circuit court as such special judge.

SEC. 5987. The county and probate judge, especially appointed under section thirty-six, article seven, shall be allowed four dollars per day for each day he shall sit, to be paid out of the county treasury. *Act Feb. 23, 1875.*

SALARIES OF COUNTY AND PROBATE JUDGES.

SEC. 5988. The judge of the county and probate court of each county in this state shall be entitled to receive as a salary the amount hereinafter mentioned, payable quarterly out of the county treasury.

SEC. 5989. The salary of the county and probate judge of Arkansas County shall be five hundred dollars. *Act Feb. 5, 1875, secs. 1 and 2.*

SEC. 5990. The salary of the county and probate judge of Ashley County shall be five hundred dollars. *Act March 21, 1881.*

SEC. 5991. The salary of the county and probate judge of Baxter County shall be four hundred dollars. *Ib.*

SEC. 5992. The salary of the county judge of Benton County shall be six hundred dollars. *Act March 3, 1881.*

SEC. 5993. The salary of the county and probate judge of Boone County shall be four hundred dollars. *Act March 21, 1881.*

SEC. 5994. The salary of the county and probate judge of Bradley County shall be five hundred dollars. *Ib.*

SEC. 5995. The salary of the county and probate judge of Calhoun County shall be three hundred and fifty dollars. *Act Feb. 5, 1875, sec. 8.*

SEC. 5996. The salary of the county and probate judge of Carroll County shall be five hundred dollars. *Act March 21, 1881.*

SEC. 5997. The salary of the county and probate judge of Chicot County shall be seven hundred and fifty dollars. *Ib.*

SEC. 5998. The salary of the county and probate judge of Clark County shall be one thousand dollars. *Act Feb. 5, 1875.*

SEC. 5999. The salary of the county and probate judge of Clay County shall be five hundred dollars. *Act March 21, 1881.*

SEC. 6000. The salary of the county and probate judge of Cleburne County shall be four hundred dollars. *Act March 5, 1883.*

SEC. 6001. The salary of the county and probate judge of Columbia County shall be six hundred dollars. *Act March 21, 1881.*

SEC. 6002. The salary of the county and probate judge of Conway County shall be seven hundred dollars. *Act March 13, 1879.*

SEC. 6003. The salary of the county and probate judge of Craighead County shall be six hundred dollars. *Act Feb. 5, 1875.*

SEC. 6004. The salary of the county and probate judge of Crawford County shall be four hundred dollars. *Act March 21, 1881.*

SEC. 6005. The salary of the county and probate judge of Crittenden County shall be seven hundred dollars. *Act Nov. 30, 1875.*

SEC. 6006. The salary of the county and probate judge of Cross County shall be four hundred dollars. *Act Feb. 5, 1875.*

SEC. 6007. The salary of the county and probate judge of Dallas County shall be three hundred dollars. *Act March 21, 1881.*

SEC. 6008. The salary of the county and probate judge of Desha County shall be nine hundred dollars. *Ib.*

SEC. 6009. The salary of the county and probate judge of Dorsey County shall be three hundred and fifty dollars. *Act Feb. 5, 1875.*

SEC. 6010. The salary of the county and probate judge of Drew County shall be six hundred dollars. *Act March 21, 1881.*

SEC. 6011. The salary of the county and probate judge of Faulkner County shall be one thousand dollars. *Act Feb. 20, 1883.*

SEC. 6012. The salary of the county and probate judge of Franklin County shall be eight hundred dollars. *Act March 13, 1883.*

SEC. 6013. The salary of the county and probate judge of Fulton County shall be three hundred and fifty dollars. *Act March 15, 1879.*

SEC. 6014. The salary of the county and probate judge of Garland County shall be one thousand dollars. *Act March 21, 1881.*

SEC. 6015. The salary of the county and probate judge of Grant County shall be three hundred dollars. *Act Feb. 21, 1877.*

SEC. 6016. The salary of the county and probate judge of Greene County shall be four hundred dollars. *Act March 21, 1881.*

SEC. 6017. The salary of the county and probate judge of Hempstead County shall be seven hundred dollars. *Act March 13, 1879.*

SEC. 6018. The salary of the county and probate judge of Hot Spring County shall be four hundred dollars. *Act Feb. 5, 1875.*

SEC. 6019. The salary of the county and probate judge of Howard County shall be four hundred dollars. *Ib.*

SEC. 6020. The salary of the county and probate judge of Independence County shall be five hundred dollars. *Act March 13, 1879.*

SEC. 6021. The salary of the county and probate judge of Izaard County shall be four hundred dollars. *Act Feb. 5, 1875.*

SEC. 6022. The salary of the county and probate judge of Jackson County shall be nine hundred dollars. *Act March 21, 1881.*

SEC. 6023. The salary of the county and probate judge of Jefferson County shall be one thousand dollars. *Act Feb. 5, 1875.*

SEC. 6024. The salary of the county and probate judge of Johnson County shall be six hundred dollars. *Act March 13, 1883.*

SEC. 6025. The salary of the county and probate judge of Lafayette County shall be five hundred dollars. *Act Feb. 5, 1875.*

SEC. 6026. The salary of the county and probate judge of Lawrence County shall be six hundred dollars. *Act March 21, 1881.*

SEC. 6027. The salary of the county and probate judge of Lee County shall be one thousand dollars. *Act Feb. 5, 1875.*

SEC. 6028. The salary of the county and probate judge of Little River County shall be four hundred dollars. *Ib.*

SEC. 6029. The salary of the county and probate judge of Lincoln County shall be six hundred dollars. *Act March 13, 1879.*

SEC. 6030. The salary of the county and probate judge of Logan County shall be five hundred dollars. *Act March 21, 1881.*

SEC. 6031. The salary of the county and probate judge of Lonoke County shall be seven hundred dollars. *Act March 13, 1879.*

SEC. 6032. The salary of the county and probate judge of Madison County shall be four hundred dollars.

SEC. 6033. The salary of the county and probate judge of Marion County shall be three hundred dollars. *Act Feb. 5, 1875.*

SEC. 6034. The salary of the county and probate judge of Miller County shall be five hundred dollars. *Act March 21, 1881.*

SEC. 6035. The salary of the county and probate judge of Mississippi County shall be six hundred dollars. *Act March 21, 1881.*

SEC. 6036. The salary of the county and probate judge of Monroe County shall be five hundred dollars.

SEC. 6037. The salary of the county and probate judge of Montgomery County shall be three hundred dollars. *Act Feb. 5, 1875.*

SEC. 6038. The salary of the county and probate judge of Nevada County shall be eight hundred dollars. *Act March 13, 1883.*

SEC. 6039. The salary of the county and probate judge of Newton County shall be three hundred dollars.

SEC. 6040. The salary of the county and probate judge of Ouachita County shall be five hundred dollars. *Act Feb. 5, 1875.*

SEC. 6041. The salary of the county and probate judge of Perry County shall be four hundred dollars. *Act March 21, 1881.*

SEC. 6042. The salary of the county and probate judge of Phillips County shall be twelve hundred dollars.

SEC. 6043. The salary of the county and probate judge of Pike County shall be three hundred dollars. *Act Feb. 5, 1875.*

SEC. 6044. The salary of the county and probate judge of Poinsett County shall be four hundred dollars. *Act March 21, 1881.*

SEC. 6045. The salary of the county and probate judge of Polk County shall be three hundred dollars. *Act Feb. 5, 1875.*

SEC. 6046. The salary of the county and probate judge of Pope County shall be six hundred dollars. *Act March 21, 1881.*

SEC. 6047. The salary of the county and probate judge of Prairie County shall be four hundred dollars. *Act Feb. 5, 1875.*

SEC. 6048. The salary of the county and probate judge of Pulaski County shall be twenty-four hundred dollars. *Act March 13, 1879.*

SEC. 6049. The salary of the county and probate judge of Randolph County shall be six hundred dollars. *Act March 21, 1881.*

SEC. 6050. The salary of the county and probate judge of St. Francis County shall be seven hundred dollars. *Ib.*

SEC. 6051. The salary of the county and probate judge of Saline County shall be six hundred dollars. *Act March 13, 1883.*

SEC. 6052. The salary of the county and probate judge of Scott County shall be four hundred dollars. *Act Feb. 5, 1875.*

SEC. 6053. The salary of the county and probate judge of Searcy County shall be three hundred dollars. *Ib.*

SEC. 6054. The salary of the county and probate judge of Sebastian County shall be one thousand dollars. *Act March 13, 1879.*

SEC. 6055. The salary of the county and probate judge of Sevier County shall be four hundred dollars. *Act Feb. 5, 1875.*

SEC. 6056. The salary of the county and probate judge of Sharp County shall be five hundred dollars. *Act March 21, 1881.*

SEC. 6057. The salary of the county and probate judge of Stone County shall be three hundred dollars. *Act Feb. 5, 1875.*

SEC. 6058. The salary of the county and probate judge of Union County shall be eight hundred dollars. *Act March 21, 1881.*

SEC. 6059. The salary of the county and probate judge of Van Buren County shall be four hundred dollars. *Act March 15, 1879.*

SEC. 6060. The salary of the county and probate judge for the County of Washington shall be eight hundred dollars. *Act Nov. 30, 1875.*

SEC. 6061. The salary of the county and probate judge for the County of White shall be nine hundred dollars. *Ib.*

SEC. 6062. The salary of the county and probate judge of Woodruff County shall be eight hundred dollars. *Act Feb. 5, 1875.*

SEC. 6063. The salary of the county and probate judge of Yell County shall be six hundred dollars. *Act March 21, 1881.*

SEC. 6064. The county and probate judges are authorized and empowered to order the clerks of their respective courts to issue quarterly warrants for the amount of salary to which they are entitled by law.

SEC. 6065. All such orders heretofore made by the county and probate judges are hereby legalized. *Act Nov. 30, 1875.*

CHAPTER CXXXIII.

SALVAGE.

SECTION

- 6066. Any person may take up boat, raft, etc., lost or wrecked, and in a perishable condition.
- 6067. Owner may recover property, and to pay salvage.
- 6068. Taker-up may retain property till salvage paid, or bring action.
- 6069. Affidavit to be made by taker-up.
- 6070. Advertisements thereof.
- 6071. When publication in newspaper not required.
- 6072. On failure to give notice, claim to salvage forfeited.

SECTION

- 6073. Salvage on rafts.
- 6074. Sale of perishable property.
- 6075. Bond in such case, where filed.
- 6076. Justice to give copy of order, etc.
- 6077. Salvage on property found afloat.
- 6078. Property to vest in taker-up after one year.
- 6079. How owner may search for and recover property lost.

SECTION 6066. When any boat, vessel, raft or other property shall be lost or wrecked, and in a perishable condition, upon any river in this state, or making a boundary of the state, any person may take up and secure the same at or near the place where found.

SEC. 6067. When any person shall set up a claim to such property, and shall prove his title to the same, by competent testimony, before any justice of the peace of the proper county, such taker-up shall restore the same to such owner, if he pay such taker-up a premium for salvage at the rate of not exceeding ten per centum upon the value of all such property, to be adjudged of by some justice of the peace of the county.

SEC. 6068. The taker-up of such boat, vessel, raft or other property shall be entitled to retain the same against the rightful owner until salvage be paid, or may have and maintain an action against such owner for the amount of salvage due in accordance with this act.

SEC. 6069. When any such property shall be taken up and secured, if the same exceed ten dollars in value, the taker-up shall immediately go before some justice of the peace of the county, and make an affidavit that the property was wrecked or lost, and was in a perishable condition, as he believed, and that he was not instrumental, directly or indirectly, in causing the property to be so wrecked, lost or set adrift, or placed in a perishable condition; and shall also state, on oath, an exact account of the quality and quantity of such property, and the time that such property was taken up, and that he has not secreted or disposed of, directly or indirectly, any part thereof.

SEC. 6070. Within twenty days thereafter, the taker-up shall cause to be inserted in some newspaper printed in this state (*), for three weeks successively,

(*) See SECS. 4356-4358.

a correct account of the time and place, when and where the said property was taken up, and the description and valuation thereof, and shall also put up three advertisements to the same effect at the most public places in the neighborhood where such property may have been taken up.

SEC. 6071. If the amount of the property taken up does not exceed fifty dollars in value, no publication in the newspaper is necessary.

SEC. 6072. Persons taking up property, and failing to give notice as required in this act, shall forfeit all claims to salvage.

SEC. 6073. When rafts are taken up, consisting of logs, fire-wood, rails, or other timber, the person taking and securing them, and complying with the requisitions of this act, shall, on the owner's claiming the same, be entitled to not exceeding twenty per centum on the value thereof, to be adjudged of by some justice of the peace of the county.

SEC. 6074. When any raft or boat, with produce therein, shall be taken up; which raft, or the cargo of the boat, consists of such articles as are usually taken to the States of Mississippi or Louisiana for sale, and the owner does not apply for or make demand of such property within twenty days, the person taking up such property may apply to some justice of the peace of the county where such property was taken up; and, on showing that the property so taken up is of a perishable nature, and is likely to be injured or become of less value by being kept, such justice may make an order authorizing the taker-up of such property to sell such property at public auction, on giving notice by advertisement as the justice may direct, or authorizing the taker-up to ship such property to any market where he may deem it most likely he will effect a good sale of such property.

SEC. 6075. Before such sale shall be made, or the property removed for shipment to another market, the taker-up thereof shall enter into bond to the State of Arkansas, with sufficient security, to be approved of by the justice, in double the value of the property so taken up, conditioned that if the owner shall appear and establish his claim to said property within one year from the time of taking up such property, the taker-up will pay to such owner the value of such property, deducting his salvage, or, when taken to a market, then deducting his salvage and reasonable expenses. Such bond shall be, by the justice, filed in the office of the clerk of the county court of the county where such property was taken up for the use of the owner.

SEC. 6076. The justice shall give to the taker-up a copy of such order of sale or shipment, with a certificate that bond has been entered into by such person for the security of the owner. The copy of such order and certificate, under the hand of the justice, shall be a sufficient voucher for the taker-up to authorize all acts of ownership over such property.

SEC. 6077. When boats are wrecked or stove, and property is found afloat on any water-course in this state, if the value thereof does not exceed one hundred dollars, then the taker-up of such property shall be entitled to not exceeding one-fourth part thereof, for taking up and securing such property, for his salvage on the same, to be adjudged by some justice of the peace of the county.

SEC. 6078. If no demand shall be made within one year from the taking up of any property under this act, and the taker-up has complied with the provisions of this act in all respects, then the property so taken up, or the proceeds when sold, shall vest in the taker-up.

SEC. 6079. When any person shall make oath before any justice of the peace that he has lost any property by wreck, or the rising of the waters, tempest or other accident, and give a description of such property, and further state that he has reason to suspect that such property so lost is secreted in the possession or custody of any person, such justice may issue his warrant to the constable of the township, describing such property in the warrant, requiring the constable to search for and to take into his possession such property when found; and, if the claimant shall prove his title to such property thus found before the justice issuing such warrant, then such justice shall cause the constable to deliver to such owner the property, he paying such fees as may be due such justice and constable for their services, which shall be the same as for like services in ordinary cases at law. *Rev. Stat., chap. 134.*

CHAPTER CXXXIV.

SCHOOL FOR THE BLIND.

SECTION

- 6080. Name of, etc.
- 6081. Where located.
- 6082. Government of, vested in trustees.
- 6083. Trustees, appointment and term of office.
- 6084. When to enter upon duties; fees.
- 6085. Oath of.
- 6086. Property acquired, how held.
- 6087. Trustees to hold land, how.
- 6088. power and duties of.
- 6089. who ineligible.
- 6090. control affairs of institution.
- 6091. Superintendent, powers of.
- 6092. report of.
- 6093. Steward, bond of.
- 6094. Auditor to issue warrant when, and for what.
- 6095. Steward, statement of.
- 6096. Trustees to keep books; what to contain.
- 6097. Report to governor.
- 6098. Pupil, presents made to, when.
- 6099. Building purposes, allowance for, how obtained.
- 6100. Superintendent, allowance to, how made.
- 6101. to make report of.
- 6102. bond of.

SECTION

- 6103. Trustees, books to be kept by.
 - 6104. Officers to report, when.
 - 6105. Trustees and superintendent, biennial reports of.
 - 6106. Trustees, visitation by.
 - 6107. annual meeting of.
 - 6108. Institute, who admitted to.
 - 6109. Persons over age admitted, when.
 - 6110. Salaries of officers, how paid.
 - 6111. Biennial reports of, how many printed.
- INDIGENT PUPILS.
- 6112. Certificate of residence to accompany application for admission.
 - 6113. Parents to provide suitable clothing and defray traveling expenses.
 - 6114. When such clothing and means for such expense to be furnished by state.
 - 6115. Collection of such expenses.
 - 6116. Funeral expenses of pupils.
 - 6117. Expense of removing pupils.
 - 6118. Case of pupils in institute without certificate, etc.

SECTION 6080. The institution of learning heretofore known as the "Arkansas Institute for the Education of the Blind" shall hereafter be entitled "The Arkansas School for the Blind," and all laws and parts of laws in relation to the "Arkansas Institute for the Blind" shall apply to the "Arkansas School for the Blind." Likewise, all contracts made with or by said institute, and all legacies, bequests or gifts made to it, shall be binding upon and belong to the "Arkansas School for the Blind." *Act March 15, 1879.*

SEC. 6081. The Arkansas School for the Blind shall be located in the City Little Rock, or its vicinity.

SEC. 6082. The government of said school shall be vested in a board of five trustees, appointed by the governor, and who shall be residents of the City of Little Rock, or its vicinity.

SEC. 6083. The governor shall, immediately after the passage of this act, and on the second Wednesday after the organization of the next general assembly, and the same day every two years thereafter, appoint, by and with the advice and consent of the senate, five persons to be trustees for said school, who shall each hold his office for the term of two years, or until his successor is qualified. *Act March 21, 1883.*

SEC. 6084. They shall enter upon their duties within thirty days after their appointment and qualification. They shall receive three dollars per day for each day actually employed in behalf of the institution, which shall be paid in the same manner as hereinafter provided for the payment of teachers.

SEC. 6085. The trustees shall, before entering upon the duties of their office, take the oath prescribed by the constitution, and an oath to faithfully discharge the duties of their office as such trustees, which oath shall be entered on record in the office of the secretary of state.

SEC. 6086. All property which has been or may hereafter be acquired by appropriation from the state, or in any other manner, for the use and benefit of the institution, shall be held and deemed to be the property of the state for such use and purposes, and all real estate hereafter purchased shall be deeded to the state, and the deed therefor duly recorded and filed in the office of the secretary of state.

SEC. 6087. The trustees may take and hold in trust for the use of the institution any lands conveyed or devised, and any money or other personal property given or bequeathed, to be applied to the benefit of the institution.

SEC. 6088. Such trustees shall make all regulations necessary for the government of the institution not otherwise provided by law, and incorporate the same in the next report they make thereafter to the general assembly. They shall have power to elect a superintendent, physician, matron, teachers and steward, who shall hold their offices during the pleasure of the trustees, and receive an annual compensation to be fixed by such trustees, the amount thereof to be reported to the general assembly.

SEC. 6089. The superintendent, steward and teachers of said institution shall not be eligible to the office of trustee for the same; nor shall any trustee be allowed to furnish material for building purposes; nor shall they be, either directly or indirectly, personally interested in the purchase of any article of merchandise or other supplies for the use of such institution.

SEC. 6090. The trustees are invested with the general control and direction of the property and affairs of the institution, with power to direct such purchases as, under the advice of the superintendent, may be deemed necessary for the comfort, health and educational advancement of the blind.

SEC. 6091. The superintendent may employ such operatives as are necessary for the proper management of the institution, repairs of buildings, cultivation of adjacent grounds belonging thereto, and shall report the same to the trustees at their next meeting thereafter, when, if they refuse to ratify such proceedings, the superintendent shall discharge said employees, and discontinue such repairs and cultivation, unless otherwise directed by the trustees; and no

expenditures for building purposes shall be made for the benefit of the institution, unless the same shall be recommended by the board of trustees.

SEC. 6092. The superintendent shall report to the trustees, prior to each session of the general assembly, a detailed statement of the number of pupils admitted and discharged, their place of residence and supposed cause of blindness, the amount of money expended, and for what purpose, and the probable sum necessary to defray the current expenses of the institution until the ensuing session of the general assembly, which report shall be embodied in that of the trustees.

SEC. 6093. The steward, before entering upon the duties of his office, shall give bond to the state in penalty and with surety, to be approved by the trustees, conditioned for the faithful performance of his official duties, such bond to be filed in the office of the auditor of state.

SEC. 6094. Upon the steward's filing with the trustees a detailed statement, under oath, of the objects and amounts of any expenditures necessary for his stores, as such steward, for clothing and fuel, such statement shall be approved by the trustees, and immediately forwarded by them to the governor; and if, in his opinion, the proposed expenditures are necessary for the proper management of the institution, he shall direct the auditor to issue his warrant for the same to the treasurer of the state, who shall pay the same to the steward out of any money in the treasury not otherwise appropriated (*).

SEC. 6095. The steward shall discharge his various duties under the direction of the superintendent, who shall examine all statements prepared by the steward, whether for past or contemplated expenditures, and the trustees shall receive no statement of the same from the steward unless the approval of the superintendent is indorsed thereon.

SEC. 6096. The trustees shall keep a book, in which they shall record all allowances, and make an entry of the proceedings had thereon, and the steward shall report to such trustees a detailed statement, under oath, of all the expenditures he may have made the preceding three months, to whom made, and for what purpose, and such report shall be accompanied with proper vouchers.

SEC. 6097. The trustees shall forward the same to the governor, to be filed in the office of the auditor of state, and be laid before the committee of ways and means at the next session of the general assembly.

SEC. 6098. The trustees and superintendent are authorized to present to each pupil who shall have finished the course in the institution, and who shall be honorably discharged from the same, having learned to read by touch, a copy of the sacred scriptures and a copy of the constitution of the United States in raised print.

SEC. 6099. When an allowance is made for building purposes, the amount thereof shall be paid over by the treasurer of state upon a warrant therefor to the superintendent, who shall appropriate the same according to the terms of the allowance.

SEC. 6100. The superintendent, upon presenting a statement, under oath, of the amount and object of any expenditure for operatives, books, apparatus, fixtures, furniture, repairs or any other purpose not heretofore enumerated,

(*) But no such warrant can be drawn unless the money has been previously appropriated. See SEC. 3173.

approved by the trustees, may have a warrant therefor, under the same regulations as provided for in case of allowance for the steward.

SEC. 6101. The superintendent shall make a report to the trustees, under oath, every six months, of the persons to whom the money so allowed was paid, and the object thereof, which report, together with the proper vouchers, approved by the trustees, shall be filed in the office of the auditor of state, the same to be laid before the committee of ways and means at the next meeting of the general assembly.

SEC. 6102. The superintendent shall give bond to the state, in penalty and with surety, to be approved by the trustees, for the faithful performance of his official duties, which bond shall be filed in the office of the auditor of state; and if, from any cause, the penalty or surety of such bond become insufficient, the trustees shall require such superintendent to execute an additional bond, or give other sufficient security, and, in default thereof, such superintendent shall be removed from office by the board of trustees.

SEC. 6103. The board of trustees shall keep a full and correct account of their proceedings, in books to be provided for such purpose.

SEC. 6104. The officers of the institute shall make report to the board as it may from time to time require.

SEC. 6105. The trustees and superintendent shall each make detailed reports biennially to the general assembly of their proceedings, the condition of the institute, the number of pupils, and other facts connected with the institution, including the exact receipts and expenditures of the board.

SEC. 6106. Some one of the trustees shall visit the institute monthly, and a majority of them together quarterly.

SEC. 6107. The annual meeting of the board shall be held at the institution on the first Monday of November of each year.

SEC. 6108. All blind persons of suitable character and capacity, between the ages of six and twenty-six years, residing in the state, shall be entitled to the benefits of the institution free of charge. Pupils from without the state may be admitted to the privileges of the institution on the payment of such sum as the board may consider sufficient to defray expenses.

SEC. 6109. If, in the opinion of the board of trustees, any blind person above the age of twenty-six years may be benefited by being received into the institution for a limited time, to learn a trade, or receive other instruction, they may, by unanimous vote and approval of the superintendent, admit such person; and they may expel from the institution any pupil whose longer continuance in the same would be injurious thereto.

SEC. 6110. The salaries of the officers of the institution shall be paid quarterly, upon a certificate therefor from the president of the board of trustees being presented to the auditor of state, who shall issue his warrants therefor to the treasurer of state, who shall pay the same out of any money in the treasury not otherwise appropriated (§).

SEC. 6111. There shall be, of each biennial report of the board of trustees to the general assembly, fifteen hundred copies printed—one thousand for the use of the general assembly, and five hundred for the institution. *Act July 22, 1868.*

(§) See note to SEC. 6094.

. INDIGENT PUPILS.

SEC. 6112. Whenever application is made for the admission of any blind person into said school (*) as a beneficiary of the privileges thereof, such application shall be accompanied by the certificate of the county judge that such person is a legal resident of the county in which it is claimed that he or she resides.

SEC. 6113. When such persons shall, upon proper application, be admitted as pupils of said school, it shall be the duty of their parents, guardians, or other friends, to suitably provide them with clothing at the time of their entrance into the school, and during their continuance therein; also, to defray their traveling expenses to and from the institution, not only at the time of the first entrance and final departure, but at any other time when it shall become necessary for them to leave or return to the school.

SEC. 6114. In all cases when suitable clothing and means for defraying traveling expenses are not otherwise supplied to the pupils of said institution, the same shall be provided by the superintendent or principal thereof, who shall make out and file with the auditor of state accounts therefor, separate in each case, against the respective counties from which such pupils are sent, in an amount not exceeding forty dollars per annum for any one pupil, which accounts shall be severally signed by the superintendent or principal; and the auditor of state shall draw his warrant on the treasurer for the said amounts, which shall be paid out of any money in the treasury, not otherwise appropriated. *Provided*, that the amount drawn by said institution for said purposes, in one year, shall not exceed two thousand dollars; and each account thus certified shall be charged to the county from which the pupil named therein was sent.

SEC. 6115. The auditor of state shall forward a certified copy of each account so filed with him to the sheriff of the proper county, who shall proceed to collect the same in the name of the state as other debts are collected, and the money so collected shall be paid over to the treasurer of state, who shall give receipts therefor, as in cases of other moneys paid into the state treasury; *provided*, that if the sheriff shall be unable to collect the amount of any bill from the parents or estate of any pupil, then the same shall be refunded to the state out of the county treasury.

SEC. 6116. In case of the death of any pupil at said school, where funeral expenses are not otherwise provided for, an account thereof shall be made out, certified to and collected, and applied in like manner as provided in the preceding sections of this act.

SEC. 6117. Whenever it shall be deemed necessary by the proper officers of said institution, in accordance with the by-laws and regulations thereof, to have pupils removed, either temporarily, on account of ill health, or the vacation of the school, or permanently, on account of having completed their course of instruction, or been found disqualified, from any cause, for a longer continuance in the school, the parents or guardians of such pupils, if they have any, shall promptly remove them upon the requirement of said officers; and, in case they shall not be thus provided for, it shall be the duty of the superintendent or

(*) See note to SEC. 2506.

principal of such institution to cause them to be so removed to their houses or delivered to the proper officers of the counties in which they may reside; and the expense of such removal shall be refunded to said institution in the same manner as provided in sections 6114 and 6115; and the county sheriff may collect it in the same manner as provided in sections 6114 and 6115.

SEC. 6118. In case of pupils now in said institution who may need the benefit of this act, and who may not have a certificate from the judge of the county in which they reside as to their residence, the certificate of two responsible citizens of the county shall be sufficient. *Act Dec. 14, 1875.*

CHAPTER CXXXV.

SCHOOLS AND SCHOOL LANDS.

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FREE SCHOOLS—SUPPORT OF.

SECTION 6119. Intelligence and virtue being the safeguards of liberty, and the bulwark of a free and good government, the state shall ever maintain a general, suitable and efficient system of free schools, whereby all persons in the state, between the ages of six and twenty-one years, may receive gratuitous instruction.

SEC. 6120. The general assembly shall provide, by general laws, for the support of common schools by taxes, which shall never exceed in any one year two mills on the dollar on the taxable property of the state; and by an annual per capita tax of one dollar, to be assessed on every male inhabitant of this state over the age of twenty-one years. *Provided*, the general assembly may, by general law, authorize school districts to levy, by a vote of the qualified electors of such district, a tax not to exceed five mills on the dollar in any one year for school purposes. *Provided, further*, that no such tax shall be appropriated to any other purpose, nor to any other district, than that for which it was levied. *Art. XIV, secs. 1 and 3, Const.*

COMMON SCHOOL FUND.

SEC. 6121. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this state, and not otherwise appropriated by the United States or this state; also all moneys, stocks, bonds, lands and other property now belonging to any fund for purposes of education; also the net proceeds of all sales of lands and other property and effects that may accrue to this state by escheat, or from sales of estrays, or from unclaimed dividends, or distributive shares of the estates of deceased persons; also any proceeds of the sale of public lands which may have been, or may be hereafter, paid over to the state (congress consenting); also ten per cent. of the net proceeds of the sales of all state lands; also all the grants, gifts or devises that have been or hereafter may be made to this state, and not otherwise appropriated by the tenure of the grant, gift or devise, shall be securely invested and sacredly preserved as a public school fund that shall be designated as the "common school fund" of the state, and which shall be the common property of the state, except the proceeds arising from the sale or lease of the sixteenth section (*).

SEC. 6122. The annual income from the said fund, together with one dollar per capita to be annually assessed on every male inhabitant over the age of twenty-one years, and so much of the ordinary annual revenues of the state as may hereafter be set apart by law for such purposes, shall be faithfully appropriated for maintaining a system of free common schools for this state, and shall be appropriated to no other purpose whatsoever. *Act Dec. 7, 1875, secs. 1 and 2.*

SEC. 6123. The state auditor shall, on requisition from the state superintendent of public instruction, draw warrants on the state treasurer for payment to the several county treasurers of the school revenues due their respective counties.

SEC. 6124. The per capita tax levied by the general revenue laws of the state shall be collected by the county collector at the same time and place that the state taxes are collected, and be paid in the county treasury on or before the first day of July of each year, in the presence of the county court clerk, who shall make a record of the same as a revenue for the support of common schools (†). *Ib., secs. 31 and 32.*

(*) No money or property belonging to the public school fund, or to this state, for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs. *Art. XIV, sec. 2, Const.*

(†) The penalty collected for the non-payment of taxes on personal property is to be paid into the county school fund. See SEC. 5746.

COLLECTION OF CLAIMS DUE THE COMMON SCHOOL FUND.

SEC. 6125. The late county common school commissioners in the several counties of this state, or other persons holding moneys, notes, bonds or other papers belonging to the common school fund, shall be and they are hereby required to turn over the same into the hands of the collectors of their respective counties when ordered to do so by the board of commissioners of the common school fund. *Act March 13, 1869, sec. 1.*

SEC. 6126. Before taking charge of any such moneys, bonds, notes and other papers each collector shall be required to give bond for the faithful keeping and delivering of the same, in such sum, double the amount supposed to come into his hands, and with such security as shall be approved by the county court, which bond, when approved, shall be filed with the county clerk; and for such service said collector shall receive one per cent. of the net amount of such claims, when collected, payable upon the order of the board of commissioners of the common school fund. *Ib., sec. 2.*

SEC. 6127. It shall be the duty of each collector to receipt to any ex-school commissioner or other person for such moneys, notes, bonds or other papers as he may receive from him, and safely keep the same subject to the order of the board of commissioners of the common school fund, and he shall deliver them to the prosecuting attorney of the judicial circuit in which he may reside, or to such other officer or person as said board may direct. *Ib., sec. 3.*

SEC. 6128. Any collector who shall fail to deliver any moneys, bonds, notes or other papers belonging to the common school fund, for ten days after receiving the proper order from the commissioners of the common school fund, or in any manner convert to his own use said moneys, bonds, notes or papers, or any portion of them, shall, on conviction thereof, be imprisoned in the penitentiary not less than five nor more than ten years. *Ib., sec. 4.*

SEC. 6129. Whenever the board of commissioners of the common school fund shall order the collector to deliver any of said moneys, notes, bonds or papers to any officer or person, they shall furnish a copy of said order to such officer or person, who, if he shall not receive from the collector such moneys, notes, bonds or papers within the time specified in the foregoing section, shall present the fact to the grand jury at the next term of the circuit court for the county in which such collector may reside, and, upon failure to do so, he shall be deemed guilty of a misdemeanor, and shall be fined in a sum not less than one hundred nor more than five hundred dollars. *Ib., sec. 5.*

SEC. 6130. If default be made in the regular payment of interest due upon money loaned, or for lands sold by any common school commissioner or township treasurer, or in the payment of the principal, interest at the rate of ten per cent. per annum shall be charged upon the principal and interest from the day of default, which shall be included in the assessment of damages, or in the judgment, in suits or actions brought upon the obligation to enforce payment thereof; and interest, as aforesaid, may be recovered in actions brought to recover interest only. *Act Jan. 11, 1853, sec. 52.*

SEC. 6131. The board of commissioners of the common school fund shall be and they are hereby empowered and authorized, when they deem it necessary and appropriate, to employ counsel other than the prosecuting attorney or

attorney-general in the adjudication and collection of outstanding claims of the common school fund in the several counties of the state; and such counsel, when so employed, shall be allowed a reasonable compensation for their services, not to exceed five per cent. of the amount in controversy, to be paid on the order of said board of commissioners; and a sufficient amount is hereby appropriated out of the common school fund for that purpose. *Provided*, no amount shall be paid for counsel to exceed five per cent. of the amount collected. *Act April 12, 1869, sec. 3.*

SEC. 6132. In the payment of debts by executors and administrators, the debts due the common school fund shall have a preference over all other debts, except funeral and other expenses attending the last sickness.

SEC. 6133. No justice of the peace, constable, clerk of a court or sheriff shall charge any costs in any suit where the collector or any other officer sues for the recovery of any money due to the common school fund, if the plaintiff in such cause is unsuccessful. *Act Jan. 11, 1853, secs. 50 and 55.*

COMMISSIONERS OF SCHOOL FUND.

SEC. 6134. The governor, secretary of state and state superintendent of public instruction shall constitute a board of commissioners of the common school fund, and shall meet semi-annually at the office of said superintendent on the first Monday in February and on the first Monday in August in each year. *Provided*, that the governor may assemble the members of said board any time, at his discretion.

SEC. 6135. The governor shall be president of said board, and shall sign the journal of each day's proceedings.

SEC. 6136. The superintendent of public instruction shall act as secretary of the said board, and shall keep a faithful, correct record of the proceedings, and shall keep the said record open at all times for inspection. A copy of said record, certified by the secretary of the board, shall be in all cases received as evidence equal with the original.

SEC. 6137. The said board of school commissioners shall have the management and investment of the common school fund belonging to the state, and shall, from time to time, as the same may accumulate, securely invest the said funds in bonds of the United States or the State of Arkansas.

SEC. 6138. That all moneys required by law to be paid into the treasury to the credit of the common school fund may, if the same be not paid within thirty days after they shall have become due and payable, be recovered, with interest due thereon, by action in any court having jurisdiction; and such action shall be prosecuted by the attorney-general of the state, or by the prosecuting attorney of any judicial district within this state, when directed by the said board.

SEC. 6139. All moneys belonging or owing to the common school fund, as mentioned in section 6121, or accruing as revenues therefrom, together with the state school tax, shall be paid directly into the state treasury, and shall not be paid out except on the warrant of the auditor. *Act Dec. 7, 1875, secs. 3-8.*

SEC. 6140. The state auditor shall be the accountant of the said board, and shall, annually, on the first Monday in October, transmit to the governor and to the superintendent of public instruction a report of the condition of the

school fund on the first day of July last preceding, with an abstract of the accounts thereof in his office.

SEC. 6141. The auditor shall, under the direction of the board of commissioners, draw warrants on the state treasurer for the payment of all or any portion of the common school fund belonging to the state, for the purchase of bonds or other securities in which the same is by law invested.

SEC. 6142. The state treasurer shall, by virtue of such warrant, pay from the uninvested common school fund the purchase money for said securities, and shall receive and deposit the same in the state treasury for safe-keeping, and receipt to the president of the board of commissioners for the kind and amount of such securities.

SEC. 6143. The said board shall, at their semi-annual meeting, settle with the state treasurer all accounts of the common school fund not before settled. *Ib.*, *secs.* 9-12.

SUPERVISION OF PUBLIC SCHOOLS.

SEC. 6144. The supervision of public schools, and the execution of the laws regulating the same, shall be vested in and confided to such officers as may be provided for by the general assembly. *Art. XIV, sec. 4, Const.*

State Superintendent of Public Instruction.

SEC. 6145. At the next general election, and every two years thereafter, there shall be elected a state superintendent of public instruction, by the qualified electors of this state, as state officers are now elected.

SEC. 6146. Before entering upon the duties of his office, he shall take and subscribe the oath prescribed for officers by the constitution of this state, and shall file such oath with the secretary of state.

SEC. 6147. The superintendent of public instruction shall be charged with the general superintendence of the business relating to the free common schools of this state.

SEC. 6148. He shall open, at the seat of the state government (at the expense of the state), a suitable office, in which he shall keep all books, reports, documents and other papers pertaining to his department, and where he shall be in attendance when not necessarily absent on business, and have personal supervision of the business affairs of his office, and keep a clear and correct record thereof.

SEC. 6149. He shall furnish suitable questions for the examination of teachers to the county examiner; he shall hold a teacher's institute annually in each judicial district of the state, to be called a normal district institute; he shall arrange the programme exercises for each of such institutes, and pre-*side* thereat. *Provided*, if he should not be present, the teachers who may have assembled may organize and hold such normal district institute.

SEC. 6150. He shall prepare and transmit to the county examiners school registers, blank certificates, reports and other printed blanks, together with other suitable blanks, forms and printed instructions, to be forwarded to directors and other school officers, as may be necessary to aid such officers in

making their reports and carrying into full effect the various provisions of the school laws of this state.

SEC. 6151. He shall exercise such supervision over the school funds as to ascertain the amount and disposal made of the same, their protection and safety when invested or deposited, and recommend measures for their security and preservation, and for rendering them most productive of revenues; shall enforce the strict application of the school revenues to the legitimate purposes for which they were intended, and shall, when directed by the commissioners of the school fund, cause to be instituted, in the name of the State of Arkansas, suits or actions for the recovery of any portion of the said funds or said revenues that may be squandered, illegally applied or unsafely deposited.

SEC. 6152. He shall, on or before the first day of November in each year, prepare and submit to the governor of this state an annual report, in writing, showing the number of persons between the ages of six and twenty-one years residing in the state on the first day of the preceding July; the number of such persons in each county; the number of each sex; the number of white; the number of colored; the whole number of such persons that attended the free common schools of the state during the year ending the thirtieth day of the last preceding June, and the number in each county that attended during the same period; the number of whites of each sex that attended, and the number of colored of each sex that attended the said schools; the number of common schools in the state; the number of pupils that studied each of the branches taught; the average wages paid teachers of each sex; the relative average wages paid to male and female teachers, respectively, according to the different grades of their certificates; the number of school-houses erected during the year, the material and cost thereof; the number previously erected, the material of which they were constructed, their condition and value; the number with their grounds inclosed; the counties in which teachers' institutes were held, and the number that attended the institutes in each county.

SEC. 6153. He shall likewise report the amount of permanent school fund belonging to the state at the close of the fiscal school year, and the amount of other property apportioned to school purposes; the nature, kind and amount of such investments made of the same; the safety and permanency of such investments; the amount of revenue accruing from the school funds; the income received from the per capita assessments of each county, and the amount derived from such assessment in all the counties of the state; the income derived from all other sources, together with the amount derived from each; likewise, in what sums, for what purposes and in what manner the said school revenue shall have been expended, and what amount of school moneys of various kinds are in the various county treasuries unexpended.

SEC. 6154. He shall include in his report such plans as he may have matured for the improvement of the common school system of this state; for the accumulation, the investment and the more judicious management of the common school fund, and, when he may deem it advisable, shall recommend measures for a more economical and advantageous collection and expenditure of the revenues accruing from the said fund; and whenever it comes to his knowledge that any of the investments of the school funds are not safe, or that any portion of the said fund is liable to be lost, that it is unproductive of revenue, or that any of the school revenues have been diverted from their proper

channel or from the appropriate objects contemplated, he shall report the facts to the governor and to the general assembly, if in session.

SEC. 6155. He shall also append to his report a statistical table, compiled from the materials transmitted to his office by school officers, with proper summaries, averages and totals given.

SEC. 6156. He shall present such a comparison of results, and such an exhibit of his administration, and of the operation of the common free school system, together with such statements of the true condition of the schools of the state, as shall distinctly show the improvements and progress made from year to year in the department of public instruction.

SEC. 6157. The annual reports of the state superintendent to the governor shall be transmitted by the governor to the general assembly at the opening of the session.

SEC. 6158. He shall have his reports to the governor published as soon as practicable after they have been made, and shall cause them to be distributed among the various school officers of the state, to be kept on file in their respective offices. *Provided*, he shall not have more than five thousand copies of such reports printed for any one year, the printing of such reports to be let out as other contracts for printing.

SEC. 6159. He shall, on the first Monday of July and on the first Monday in January of each year, make a *pro rata* apportionment to the several counties of the state of the remaining revenues in the state treasury, available for distribution for school purposes, on the basis of the number of persons between the ages of six and twenty-one years residing in the said counties, respectively, on the first Monday of July previous; and he shall publish a statement of the same, and as early as practicable shall transmit a copy thereof to each county examiner and to each of the several treasurers in the state, and to each county clerk, who shall submit the same to the county court at its next term; and he shall thereupon draw his requisition on the state auditor in favor of the treasurers of the several counties for such amounts as the said counties may be entitled to receive for the support of free common schools.

SEC. 6160. He shall, from time to time, publish in convenient pamphlet form, and furnish each school officer, the acts of the general assembly relating to common schools, and the decisions of the courts having competent jurisdiction in relation to the school laws; and he shall likewise, at the request of any school officer, render a decision relating to the intent, construction or administration of any portion of the school laws on which decisions shall not have been published, and he may, when he shall deem it advisable to have the opinion of the attorney-general, require said opinion to be given in writing.

SEC. 6161. He shall, for the purpose of ascertaining the amounts, safety and preservation of the school funds, have access to the auditor's books and papers, with full power to use and inspect the same.

SEC. 6162. At the expiration of his term of office he shall deliver to his successor possession of his office, together with all books, records, documents, papers and other articles belonging or pertaining to his office.

SEC. 6163. He shall affix the seal of the department of public instruction to all official communications from his office.

SEC. 6164. Whenever a vacancy in the office of superintendent of public instruction shall occur, from death, resignation or otherwise, the governor shall

appoint a person of suitable attainments to serve the remainder of the unexpired term. *Provided*, such vacancy shall occur within nine months from the next succeeding election; otherwise an election shall be ordered, as in case of state officers.

SEC. 6165. Neither the state superintendent nor county examiner shall act as agent for any author, publisher or bookseller, nor directly or indirectly receive any gift, emolument, reward or promise of reward for his influence in recommending or procuring the use of any book, school apparatus or furniture of any kind whatever, in any public school; and any school officer who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and subject to removal from office.

SEC. 6166. The state superintendent of public instruction shall have power to grant state certificates, which shall be valid for life, unless revoked, to any person in the state who shall pass a thorough examination in all those branches required for granting county certificates; and, also, in algebra and geometry, physics, rhetoric, mental philosophy, history, Latin, the constitution of the United States and of the State of Arkansas, natural history and theory and art of teaching.

SEC. 6167. He shall prepare, for the benefit of the common schools of the state, a list of such text-books on orthography, reading in English, mental and written arithmetic, penmanship, English grammar, modern geography and history of the United States as are best adapted to the wants of the learner, and as have been prepared with reference to the most philosophical methods of teaching those branches, and shall recommend the said text-books to teachers and to directors throughout the state.

SEC. 6168. He shall procure and adopt a seal for his office, and furnish an impression and description of said seal to the secretary of state, to be preserved in his office.

SEC. 6169. A copy of any paper or document deposited or filed in the office of the superintendent of public instruction shall, when authenticated by the said seal, be evidence equal, to all intents and purposes, with the original.

SEC. 6170. The said superintendent shall prepare appropriate forms for three several grades of certificates to be issued to teachers by the county examiners. He shall prepare suitable school registers, in which teachers, at the close of the school term, are to make their reports to the trustees of the name and age of each pupil, the date of each pupil's entrance, the separate days on which each attended school, the studies each pursued, the total attendance; and shall likewise prepare suitable forms for the reports of directors and county examiners. *Act Dec. 7, 1875, secs. 13, 30 and 33-37.*

SCHOOL DISTRICTS.

SEC. 6171. The boundaries of school districts in counties of this state shall be and remain as now established, except that the county court shall have power to alter the same whenever a majority of the citizens residing therein shall petition the court so to do; but in all changes due regard shall be had to the convenience of the citizens, and all the territory in the county shall be embraced in said school districts.

SEC. 6172. Each school district shall be a body corporate, by the name and

style of "School District No. —, of the County of —;" and by such name may contract and be contracted with, sue and be sued, in any of the courts of this state having competent jurisdiction (†).

SEC. 6173. Every district shall hold in the corporate name of the district the title of lands and other property which may be acquired by said district for school district purposes. *Act Dec. 7, 1875, secs. 39 and 53.*

SEC. 6174. No new school district shall be formed having less than thirty-five persons residing within the territory included in such new district of scholastic age, and no district now formed shall, by the formation of a new district, be reduced to less than thirty-five persons of scholastic age. *Act March 11, 1881, sec. 6.*

SEC. 6175. The county court shall have the right to form new school districts, or change the boundaries thereof, upon a petition of a majority of all the electors residing upon the territory of the district to be so affected by such change within the territory to be included in the new district proposed. *Provided*, such territory have the requisite number of children and property to comply with the now existing laws in such cases provided. *Act March 30, 1883, sec. 2.*

APPORTIONMENT OF SCHOOL FUNDS.

SEC. 6176. The county court, immediately on receiving notice of the distributive share of school revenue apportioned by the state superintendent to each county, shall proceed to apportion to the several school districts of the county, in proportion to the number of persons between the ages of six and twenty-one years residing within the school districts, respectively, on the first Monday of July previous, the said school revenue apportioned to the county, and shall forward to the county treasurer, and to each of the directors of each district, a statement of such apportionment, carefully distinguishing the sources from which the school revenues so apportioned are derived, and the amount due each school district in the county from each separate source, and shall see that the revenues from the public school fund are invariably paid to the county and to the school districts strictly in accordance with the apportionment made to them.

SEC. 6177. Whenever a new district shall have been formed and organized, the court shall, at the next apportionment made thereafter, apportion to the new district school revenues in proportion to the number of persons between the ages of six and twenty-one years reported by the directors of the new district; *provided, always*, that the number of persons between the ages of six and twenty-one years reported in any year by the district directors of each county shall be taken as the quota of that county, and the number reported from each school district shall be taken as the quota of that district, and that the only basis on which an apportionment of the school revenue shall be made is to be the number of persons so reported each year by the district directors. *Act Dec. 7, 1875, secs. 40, 41.*

SEC. 6178. The county examiners of the several counties shall, annually, between the tenth and twentieth days of September, transmit, verified by affidavit, to the county clerks of their respective counties a written report,

(†) School districts are not liable for trespasses committed by their officers. *School District No. 11 v. Williams, 38—454.*

showing the number of persons between the ages of six and twenty-one years residing in each school district in their respective counties, as shown by the reports of the district directors made for the same year to the county examiners, as is now required by law.

SEC. 6179. The county clerks shall, during the first terms of their respective county courts held after the reception of the reports provided for in the preceding section, lay such reports before such county courts, to be used as a guide in making the apportionment of the general school fund to the various school districts. *Act March 23, 1881.*

SEC. 6180. Any county which, by a change of county lines, or by the formation of a new county or counties, shall fail to receive the school funds which justly should be apportioned to it, from the fact of its school population being reckoned with that of the county or counties to which the said funds may be apportioned, shall be reimbursed for the loss thus incurred. Said loss shall be corrected in the first apportionment of the school revenue thereafter. *Provided*, that if such correction be not made in the first apportionment thereafter, it may be made in the second.

SEC. 6181. The amounts refunded according to the provisions of section 6180 shall be deducted from the funds apportioned to the counties which were the original recipients of the erroneously apportioned revenues.

SEC. 6182. Upon the presentation of the certificate of the superintendent of public instruction of the amount or amounts due any county, by the provisions of this act, to the auditor, he shall draw his warrant on the state treasurer for said amount or amounts in favor of the treasurer of said county for the benefit of the school fund, and in compliance with section 6180. *Act March 6, 1877.*

COUNTY EXAMINERS.

SEC. 6183. The county court of each county shall, at the first term thereof after each general election, appoint in each county not divided into two judicial districts one county examiner, and in each county divided into two judicial districts may appoint one county examiner for each district, such examiner to be of high moral character and scholastic attainments; and it shall be the duty of the county clerk to issue a commission to the person so appointed, and immediately to certify his name and post-office address to the superintendent of public instruction. *Act Dec. 7, 1875, sec. 42, as amended by sec. 1, act March 20, 1883.*

SEC. 6184. Any appointments heretofore made by the county courts for the districts of such counties as are mentioned in the preceding section in which an examiner has been appointed for each district are hereby declared to be legal and valid appointments. *Act March 20, 1883, sec. 2.*

SEC. 6185. Before entering upon the duties of that office, the county examiner shall take and subscribe the oath prescribed for officers by the constitution of this state, and file such oath in the office of the county clerk.

SEC. 6186. It shall be the duty of such examiner to examine and license teachers of common schools; and he shall receive, as a compensation for his services, the sum of two dollars for each examination, to be paid by the person applying for the same. He shall hold, quarterly, at the county seat of each county, in a suitable room to be provided by the county court, a public examina-

tion for that purpose, and shall, previous to holding such examination, give at least twenty days' notice thereof to the directors of each school district within the county, whose duty it shall be to file the original notice in their office, and post, without delay, copies of said notice in three or more of the most conspicuous places within their district. He shall conduct all examinations by written and oral questions and answers, but shall grant no certificates of qualification except in accordance with the provisions of law respecting teachers' certificates.

SEC. 6187. He shall, at the time and places appointed for holding public examinations, examine, in orthography, reading, penmanship, mental and written arithmetic, English grammar, modern geography, history of the United States, all persons present and applying for an examination, with the intention of teaching; and if convinced that such persons are of good moral character, and are competent to teach successfully the foregoing branches, he shall give such persons certificates ranking in grades to correspond with the relative qualifications of the applicants, according to the standard adopted; but he shall not license any person to teach who is given to profanity, drunkenness, gambling, licentiousness or other demoralizing vices, or who does not believe in the existence of a Supreme Being; nor shall he be required to grant private examinations. He may cite to re-examination any person holding a license and under contract to teach any free school within his county, and on being satisfied, by a re-examination or by other means, that such person does not sustain a good moral character, or that he has not sufficient learning and ability to render him a competent teacher, he may, for these and other adequate causes, revoke the license of such person; and, in case of such revocation, he shall immediately give notice thereof to such teacher and the directors, and thereby terminate the contract between the said parties; but the wages of such teacher shall be paid for the time he shall have actually taught, prior to the day on which he received notice of the revocation of his license.

SEC. 6188. He shall issue three grades of certificates, to be styled, respectively, certificates of the first, and of the second, and of the third grades. Certificates of the first grade shall be valid, in the county for which they were issued, for two years. Those of the second grade shall be valid, in the county for which they were issued, for one year. Those of the third grade shall be valid, in the county, six months. But he shall not renew any certificate or grant a license without an examination of the applicant with reference thereto.

SEC. 6189. He shall keep a record of the age, name, sex, post-office address and nativity of each person licensed by him to teach, and of the date and grade of his certificate, and shall include such record in his report to the state superintendent.

SEC. 6190. He shall encourage the inhabitants to form and organize school districts, to establish public schools therein, under qualified teachers, to furnish suitable text-books for their children, and to send them to school. He shall direct the attention of teachers and school patrons to those methods of instruction that will best promote mental and moral culture, and to the most feasible and improved plan for building and ventilating school-houses. He shall labor to create among the people an interest in the public schools, and shall take advantage of public occasions, such as the dedication of school-houses, public examinations and institutes, to impress people with the importance of educating

every child, and consequently of the duty of maintaining a system of free schools established by law. He shall receive the reports of the directors, transmit an abstract of the same to the state superintendent, and transmit therewith a report of the condition and prospects of the schools under his superintendence, together with such other information and suggestions as he may deem proper to communicate.

SEC. 6191. He shall, annually, on or before the twentieth of September, prepare in tabular form an abstract of the reports made to him by the directors of the school districts embraced within his county, showing the number of organized districts in his county at the commencement of the year, on the first day of July preceding, the districts that have made their annual reports, the number of persons in each district between the ages of six and twenty-one years, distinguishing the sex and also the color of said persons; the number of said persons that attended school during the year; the average number of males and of females of each color in daily attendance; and the number that pursued each of the studies designated to be taught in the common schools; the number of teachers of each sex employed in his county; the average wages paid per month to teachers of each sex, according to the grade of their certificate; the whole amount paid as teachers' wages in his county; the number of pupils that studied in his county, and the several branches taught; the number of school-houses erected during the year in his county, material and cost of the same; the number before erected, the material used in their construction, their condition and value; the grounds of how many inclosed; the amount of money raised by tax in each district, for what purpose raised; the amounts that have been expended, and for what purposes; the amount of revenue received by his county from the common school fund, and received for the support of schools from each of all other sources; for what purposes and in what sums the said revenues were expended, and what amounts unexpended were, at the close of the school year, in the county treasury; and shall report also the number of deaf-mutes, blind and insane in each school district in his county, under thirty years of age, their names and their post-office.

SEC. 6192. He shall number the several school districts in his county in regular order from number one upward, and shall keep in his office a record and description of each district, with the boundaries clearly defined, and also a record of such changes or alterations in the boundaries of each as shall from time to time be made.

SEC. 6193. He shall have power to appoint some suitable person to hold teachers' institutes and examine teachers in his county, in case of his inability to attend such institutes and examinations.

SEC. 6194. The now acting county superintendents shall, immediately after the county courts shall have appointed the county examiners, deliver to said examiners all books, papers, records and other property now in their possession by virtue of their offices belonging to the state, and take receipts for the same; and the office of county superintendent is hereby abolished. *Act Dec. 7, 1875, secs. 43-52.*

SEC. 6195. If any county examiner shall be found incompetent, or shall be frequently neglectful of his duty, upon satisfactory proof, the county judge shall remove him from office and shall immediately appoint his successor. *Act March 11, 1881, sec. 7.*

SEC. 6196. If any county examiner shall neglect, fail or refuse to perform any of the duties required of him in section 6191, and shall not forward the abstract mentioned in said section to the superintendent of public instruction on or before the twentieth day of September of each year, he shall forfeit to the county the sum of twenty-five dollars, to be recovered as in this act provided, together with all cost, and be paid into the county treasury. *Act March 11, 1881, sec. 11.*

ANNUAL SCHOOL MEETING.

SEC. 6197. The electors of each organized school district in this state shall annually, on the third Saturday in May, at two o'clock P. M., hold a public meeting, to be designated "The annual school meeting of the district." *Act, Dec. 7, 1875, sec. 54, as amended by act March 11, 1881.*

SEC. 6198. All persons qualified to vote for county and state officers at the general election shall be deemed qualified electors of the school district in which they reside, and shall have the privilege of voting at all school meetings.

SEC. 6199. The electors of every school district shall, when lawfully assembled in annual district school meeting, with not less than five electors present, have the power, by a majority of the votes cast at such meeting, first to choose a chairman; second, to adjourn from time to time; third, to appoint, when necessary, in the absence of the directors of the district, a clerk *pro tem.*; fourth, to elect a director for the district for the next three school years, who can read and write; fifth, to designate a site for a school-house; sixth, to determine the length of time during which a school shall be taught more than three months in a year; seventh, to determine what amount of money shall be raised by tax on the taxable property of the district sufficient, with the public school revenues apportioned to the district, to defray the expenses of a school for three months, or for any greater length of time they may decide to have a school taught during the year; *provided*, that no tax for purposes aforesaid greater than one-half of one per cent. on the assessed value of the taxable property of the district shall be levied; *and provided, further*, that they may, if sufficient revenue can not be raised to sustain a school for three months in any one year, determine by ballot that no school shall be taught during such year, in which case the revenue belonging to such district shall remain in the treasury to the credit of such school district; eighth, to repeal and modify their proceedings from time to time.

SEC. 6200. The annual district election shall be held by the school directors as judges, who shall have power to appoint two clerks; and if any of the directors should not attend, the assembled voters may choose judges in the place of those not attending, and the judges and clerks shall take the oath prescribed by the general election law.

SEC. 6201. The ballot of the voter shall, in addition to the name of the persons voted for as directors, have written or printed on it the words "for tax," or "against tax," and also the amount of tax the voter desires levied.

SEC. 6202. When the polls are closed (*), the judges shall proceed to count the votes, ascertain the result and make return thereof to the county court, showing the number of votes cast for each person voted for for school director,

(*) As to time for opening and closing the polls, see *Holland v. Davies*, 36—446.

also the number cast for and against tax, and the number of votes cast for each amount or rate of tax voted for (a); such return, together with the ballots, shall be sealed up and delivered by one of the judges to the county clerk, at least ten days before the meeting of the county court for levying taxes.

SEC. 6203. The county court, at its said meeting for levying taxes, shall open the return and ascertain whether a majority of the votes cast be for tax; and if a tax has been voted, then the court shall determine the amount of taxes voted by taking the largest amount or rate of taxation voted for by a majority of the voters, which shall be levied and collected by the district so voting; and if no rate shall have received such majority, then all the votes cast for the highest rate shall be counted for the next highest, and so on, till some rate voted shall receive a majority of all the votes cast. In other respects the election shall be held according to the general election law. *Act Dec. 7, 1875, secs. 55 and 56.*

SEC. 6204. All taxes voted for school purposes by any school district shall be levied by the county court at the same time the county taxes are levied, and shall be collected in the same manner as the county taxes are collected, at the same time and by the same person, and be paid into the county treasury, there to be kept subject to disbursement on the warrant of the school directors; *provided*, that no tax for the purposes aforesaid greater than one-half of one per cent. on the assessed value of the taxable property of the district shall be levied, which shall be done by ballot (aa). *Act Dec. 7, 1875, sec. 41.*

SCHOOL DIRECTORS.

SEC. 6205. At the annual school meeting, held on the third Saturday in May, there shall be elected, by the legal voters in each school district, a director, who shall hold his office for the term of three years from October fifteenth next ensuing, and until his successor shall have been elected and have qualified. *Provided*, that at the first annual school meeting of the district after the passage of this act, three school directors shall be elected, to hold office one, two and three years, respectively; *and provided, further*, that when a new school district shall have been formed under the provisions of this act, three directors shall be immediately elected by the electors of the new district, and shall hold their office for one, two and three years, respectively, and until their successors are elected and qualified as herein provided for. *Act Dec. 7, 1875, sec. 57, as amended by act March 11, 1881, sec. 2.*

SEC. 6206. Any person elected and accepting the position of director of a school district shall, within ten days after having been notified of his election, file his acceptance with his predecessor at the time in office, and shall, within ten days after the fifteenth of October, take and subscribe, before a justice of the peace or other competent officer, the oath prescribed for officers by the constitution of this state, and shall file the said oath in the office of the clerk of the county in which he resides. *Act Dec. 7, 1875, sec. 58.*

(a) Unless the judges make return of the election or vote to the county court, it can not levy the tax. *Hodgkin v. Fry*, 33—716. The omission of the judges to state in their return the number of votes cast for and against the proposed tax will not defeat a levy adopted by the meeting. *Holland v. Davies*, 36—446. As to other irregularities, see same case and *Rogers v. Kerr*, 42—100.

(aa) The county court has no power to levy a school tax independent of action on the part of the electors of each school district for which the tax is levied; it can only cause to be placed on the tax books and collected such rates as are reported from the districts. An excessive levy vitiates the whole tax. *Worthen v. Badgett*, 32—496. See *Cairo & Fulton R. R. Co. v. Parks*, 1b., 131; *Rogers v. Kerr*, 42—100.

SEC. 6207. An old director shall, upon application of an incoming director, administer to him the oath of office. *Act March 11, 1881, sec. 5.*

SEC. 6208. Any person who shall have been elected or appointed a director, and shall neglect or refuse to qualify and serve as such, shall forfeit to his district the sum of ten dollars, which may be recovered by action against him at the instance of any elector in the district, and which, when collected, shall be paid into the county treasury by the officer before whom the action was maintained, and added, by the treasurer, to the school fund revenues appropriated to the district.

SEC. 6209. Any director who shall neglect or fail to perform any duties of his office shall forfeit to his district the sum of twenty-five dollars, to be recovered as directed in the preceding section, and to add in like manner to the school fund revenues apportioned to his district.

SEC. 6210. If the office of any director in a district becomes vacant, the electors of said district shall, in a district meeting assembled, within fifteen days after the occurrence of such vacancy, elect a director to serve the remainder of the unexpired term; but if the district in which such vacancy occurs neglect or fail to elect a director to fill such vacancy, then the county court shall appoint from the electors of said district a director to serve the remainder of the term.

SEC. 6211. The trustees of the several school districts in each county in the state shall hold office and perform the duties required of boards of directors in this act until their successors are elected and qualified in regular manner, according to the provisions of this act.

SEC. 6212. The said board shall make provision for establishing separate schools for white and colored children and youths, and shall adopt such other measures as they may judge expedient for carrying the free school system into effectual and uniform operation throughout the state, and providing, as nearly as possible, for the education of every youth.

SEC. 6213. The directors shall have charge of the school affairs and of the school educational interests of their district, and shall have the care and custody of the school-houses and grounds, the books, records, papers and other property belonging to the district, and shall carefully preserve the same, preventing waste and damage; and shall purchase or lease, in the corporate name of the district, such school-house site as may be designated by a majority of the legal voters at the district meeting; shall hire, purchase or build a school-house with funds provided by the district for that purpose; and may sell or exchange such site or school-house, when so directed by a majority of the electors of any legal meeting of the district.

SEC. 6214. They shall hire, for and in the name of the district, such teachers as have been licensed according to law, and shall make with such teachers a written contract, specifying the time for which the teacher is to be employed, the wages to be paid per month, and any other agreement entered into by the contracting parties, and shall furnish the teachers with a duplicate of such contract, and keep the original; and they shall employ no person to teach in any common school of their district unless such person shall hold, at the time of commencing his school, a certificate and license to teach, granted by the county examiner or state superintendent.

SEC. 6215. The term "month," wherever it occurs in any section of this act, shall be construed to mean twenty days, or four weeks of five days each. *Act Dec. 7, 1875, secs. 58-62.*

SEC. 6216. The directors of each school district in this state shall adopt and cause to be used in the public schools, in their respective districts, one series of text-books in each branch or science taught in the public schools of their respective districts, and no change in these books shall be made for a period of three years, unless it be by a petition of a majority of the voters of the district desiring the change. *Act March 11, 1881, sec. 2.*

SEC. 6217. They shall procure from the county examiner, and furnish the teacher at the commencement of the term, a register for his school, and require the said teacher to report, in the said register, at the close of the school term, the number of days of the said term, the name and age of each pupil, the date on which each entered the school, the separate days on which each attended, the whole number of days each attended, the studies each pursued, the total number of days all pupils attended, the average daily attendance and the number of visits received from the directors during the said term. *Act Dec. 7, 1875, sec. 63.*

SEC. 6218. They shall visit the schools at least once each term, and encourage the pupils in their studies, and give such advice to the teacher as may be for the benefit of teacher and pupils.

SEC. 6219. They shall submit to the district, at the annual meeting, an estimate of the expenses of the district for that year, including the expenses of a school for the term of three months for the next year, after deducting the probable amount of school moneys to be apportioned to the district for that school year, and shall also submit an estimate of the expenses per month of continuing the school beyond the term of three months, and of whatever else may be necessary for the comfort and advancement of the said school.

SEC. 6220. They shall, in all suits and actions at law brought by or against their district, appear for and in behalf of said district. *Provided*, that they shall have no other directions or instructions by a lawful meeting of the electors of their district.

SEC. 6221. They shall draw orders on the treasurer of the county for the payment of wages due teachers, or for any lawful purpose, and they shall state in every such order the services or consideration for which the order is drawn, and the name of the person rendering such service; but they shall not draw any order on the county treasurer for the payment of the wages of any teacher not licensed.

SEC. 6222. When the warrant of any board of directors, properly drawn, is presented to the treasurer of the proper county, he shall pay the same out of any funds in his hands for that purpose belonging to the district specified in said warrant.

SEC. 6223. The directors shall give notice of each annual meeting, by posting notices thereof, at least fifteen days previous to such meeting, in three or more conspicuous places within the district (b); but it shall not be lawful for a

(b) It is the duty of the directors to designate the place of the annual meeting, and notice of the time and place is essential to the validity of a tax voted at such meeting. But the statute designates the time, and all are bound to take notice of it. If notice of the place be given, the meeting will be legal, though the time be not specified in the notice. *Hodgkin v. Fry*, 33-716. A notice given by two of the directors is sufficient. *Holland v. Davies*, 36-446.

district, at any annual meeting, to fix a site for a school-house, or to raise money for building or purchasing a school-house, unless the directors shall have particularly set forth in the previous notice given of such meeting that these matters were to be submitted for their consideration and action.

SEC. 6224. One of the directors shall act as clerk at all district meetings, shall keep a record of the proceedings thereof in a book provided for that purpose, or, if absent, shall transcribe into the said book the minutes kept by the clerk *pro tempore*, and signed by the chairman, as so much of the authenticated records of the district; and he shall enter on the said book copies of all his reports to the county clerk and the county examiner.

SEC. 6225. He shall keep, in a book provided for that purpose, the accounts of the district, by debits and credits, including the accounts with the county treasurer, and shall present the same to each annual meeting, showing the current expenses for the year, for school-houses, out-buildings, fences with which to inclose a school-house site, for stoves, wood, maps, charts, blackboards, a dictionary, and other necessities for a school, and stating the number of days the directors have been necessarily employed in the performance of their duties as directors; the date of each order drawn by them on the county treasurer, and for what services or consideration, for what amounts and in whose favor, exhibiting vouchers therefor; a statement of the indebtedness of the district, and also of the surplus moneys, if any, in the county treasury belonging to the district at the commencement of the year; the amount of taxes levied on the district for school purposes within the year; the different purposes for which said taxes were levied, and the amount levied for each purpose. If, on examination, the report be found correct, the chairman of the meeting shall approve the same, and order that it be filed with the records of the district.

SEC. 6226. The directors shall, within ten days after any school meeting, report to the clerk of the county so much of the proceedings of said meeting as pertains to the election of officers; and they shall, on or before the first day of October in each year, furnish to the clerk so much of the copy of their record, attested by the chairman of the meeting, as shows the amount of money voted to be raised by the district, for school purposes, at the annual meeting.

SEC. 6227. They shall, annually, between the first and tenth days of September, transmit, verified by their affidavit, to the county examiner, a written report, in proper form, of the name of their county; of the number of their district; the names and ages of all persons, between the ages of six and twenty-one years, residing in their district on the first day of September; the number of males and females, respectively, of each color, that attended the common schools during the last school year; the average number of each sex that attended daily; the number that pursued each of the studies designated to be taught in the common schools of this state; the number of times the school was visited each term by the directors; the number of days that school was taught during the year by a licensed teacher; the name of each teacher; the grade of his certificate; the wages paid each teacher per month, and the whole amount of wages paid teachers during the year. They shall include in their report the amount of taxes voted by the district during the last school year, for what purpose voted, and the amount voted for each purpose; the amount drawn from the county treasurer for each purpose for which money was raised by district tax the previous year; the amount of revenues received

from the common school fund, and the amount received from each of the various other sources from which school revenues are derived; the amount of each kind of revenue remaining in the county treasury and subject to the order of the district; the number of school-houses erected during the year, and the cost and material of each; the number, the material, the condition and the value of those before erected, and the value of all other property belonging to the district; the condition of the school-house grounds, and whether the said grounds are inclosed; also, name, age and post-office of deaf, dumb, blind and insane in each district, including all who are blind or deaf to such an extent as not to be educated in common schools; and they shall record the said report in the proper place in the district book in which the current record of the proceedings of the district is kept.

SEC. 6228. If the directors of any district fail or neglect to make a report of the enumeration, statistics and finances of their district at the time and in the manner prescribed in the preceding section, the said directors, in addition to their forfeiture for neglect of duty, shall severally be liable for any damages, including the costs of the suit, that the district may sustain by reason of losing the school revenues that would otherwise have been apportioned to them.

SEC. 6229. They shall, at the close of the school year, settle with the county treasurer, and ascertain what moneys, if any, to which their district may be entitled, and the amounts, severally, thereof that are in the county treasury and subject to be drawn by their district. *Ib.*, secs. 64-75.

SEC. 6230. The directors of any school district may, at the instance of the teacher, suspend from the school any pupil for gross immorality, refractory conduct or insubordination, or for infectious disease. *Provided*, that such suspension shall not extend beyond the current term.

SEC. 6231. They may permit older persons to attend the school under such regulations as they may deem proper.

SEC. 6232. The county court shall have power, upon the petition of any person residing in a particular school district, to transfer the child, children or wards of such person, for educational purposes, to an adjoining district in the same county, or to an adjoining district in an adjoining county, and shall at once notify the county examiner of the county or counties and the directors of both districts.

SEC. 6233. The directors of the district to which such children have been transferred, at the time of taking the enumeration, shall include such children in the district to which they have been transferred, and they shall not be enumerated in the district where they reside. The district school tax of such person shall be added to the school revenues of the district to which he has been transferred, and shall not be included in the school revenues of the district where he resides.

SEC. 6234. Any person who transfers his child, children or wards and property to any district, for educational purposes, shall have the same right to vote in said district for directors and tax as other electors have of the district to which he is so transferred. Where such person is transferred to a district out of his county, the county treasurer of the county wherein he resides shall open an account with the district to which he is transferred, and his school taxes shall be credited to the same and paid on the warrants of the directors of the district to which he is transferred. *Provided, further*, any person transferring

his property and children to an adjoining school district, for educational purposes, shall not have the right to vote for directors or tax out of his county, and to vote only in the political township in which he resides. *Ib.*, sec. 76, as amended by act March 30, 1883, sec. 1.

SEC. 6235. The directors may permit a private school to be taught in the district school-house during such time as the said house is not occupied by a public school, unless they be otherwise directed by a majority of the legal voters of the district.

SEC. 6236. They shall cause the public schools in their district to be closed on the days appointed for public examination of teachers in their county, and also cause the said school to be closed during the session of the teachers' institute.

SEC. 6237. Directors and county examiners shall be exempt from working on roads and public highways, and from serving on juries, during their term of office. *Ib.*, secs. 77-79.

SEC. 6238. Any director or other person whose duty it may become to report to the county court the per cent. of tax levied by any school district at an annual meeting, and who shall neglect or refuse to do so in the manner and at the time provided by law, shall be liable for all loss which may be sustained by such failure and for all costs, and shall be fined not less than ten nor more than fifty dollars.

SEC. 6239. Within fifteen days after any special tax shall be voted by a school district at an annual meeting, it shall be the duty of the directors to furnish the county clerk with a certified list of all persons owning property in the district liable to pay such special tax.

SEC. 6240. Any person whose duty it is to execute sections 6216, 6239 or 6254, and who shall fail to do so, shall be fined not less than ten nor more than fifty dollars, and the same shall be paid into the county treasury. *Act March 11, 1881, secs. 1, 3 and 9.*

TEACHERS.

SEC. 6241. Any person who shall teach in a common school in this state, without a certificate of his qualification and his license to teach, shall not be entitled to receive for such services any compensation from revenues raised by tax or in anywise appropriated for the support of common schools; *provided*, that if his license expire by limitation during any school, such expiration shall not have the effect to interrupt his school, or to debar his claim against school revenues for the payment of teacher's wages.

SEC. 6242. Every teacher shall keep a daily register of his school in the manner prescribed by law, and indicated by the blank school register to be furnished by the director at the commencement of his school.

SEC. 6243. It shall be the duty of each and every teacher to attend the public examination for teachers, to become members and attend the regular session of the teachers' institute as soon as the same shall have been established; and no teacher, when attending examination or the institute, shall be charged for loss of time while necessarily absent from his school to attend such examination or institute.

SEC. 6244. No teacher employed in any of the common schools shall permit sectarian books to be used as a reading or text-book in the school under his care.

SEC. 6245. Any teacher who shall have complied with the provisions of this act shall be paid from the first money received into the county treasury to the credit of the district; and his claim shall not be superseded by any subsequent claim (†); and no money in the county treasury belonging to any district shall, so long as there is any such claim filed against the said district, be applied to any purposes whatever other than the payment of teachers' wages. *Act Dec. 7, 1875, secs. 80-84.*

SEC. 6246. No teacher shall be entitled to the last month's pay for any school taught by him until he shall have returned to the directors of the district in which such school was taught the daily register furnished him, with all statistical work which teachers are by law required to perform, perfected and complete, and no director shall otherwise issue an order for such last month's pay. *Act March 11, 1881, sec. 4.*

TRESPASS ON SCHOOL-HOUSES, ETC.

SEC. 6247. Any person who shall willfully destroy or injure any building used as a school-house, or for other educational purposes, or any furniture, fixtures or apparatus thereto belonging, or who shall deface, mar or disfigure any such building, furniture or fixtures, by writing, cutting, painting or pasting thereon any likeness, figure, words or device, without the consent of the teacher or other person having control of such house, furniture or fixtures, shall be fined in a sum double the value of any such building, furniture, fixtures or apparatus so destroyed, and shall be fined in a sum not less than ten nor more than fifty dollars for each offense for writing, painting, cutting or pasting in any such building, furniture or fixtures any such words, figures, likeness or device, to be recovered by civil action in any court of competent jurisdiction; and the punishment provided in this section is in addition to, and not in lieu of, the punishment provided by the statutes for such offenses (*). *Act Dec. 7, 1875, sec. 86.*

SCHOOL WARRANTS—DISBURSEMENT OF FUNDS, ETC.

SEC. 6248. It shall be unlawful for county collectors and treasurers to purchase, or otherwise be the owners of or interested, directly or indirectly, in, any school warrant issued by any school director of the county in which they reside.

SEC. 6249. The district school tax in each county may be payable and receivable in the warrants drawn by the directors of the school district in which a school tax may be levied by the county court.

SEC. 6250. It shall be the duty of the county treasurer of each county to keep in his office a suitable and well-bound book, in which he shall register by number and in the order of presentation all district school warrants that may be presented to him; this registration to be made before the warrant is paid, and it shall show the date of the presentation of the warrant, by whom drawn, on what district, and in whose favor, and for what purpose drawn, the amount and date of the warrant, date of payment, and to whom paid; and said book shall at all times be subject to the inspection of any tax-payer.

SEC. 6251. It shall be the duty of the county treasurers, immediately upon the receipt by them of any school funds, to give notice of the amount and

(†) See SEC. 6251.

(*) For an offense committed by insulting a teacher in the presence of his pupils, see SEC. 1807.

kind of funds received, and from what source received, by written or printed notices put up in two public places in each and every school district and at the court-house door, and the funds so received shall be paid out *pro rata* on the warrants registered in accordance with the provisions of the preceding section (†); *provided*, that application for such payment is made within thirty days from the giving of the notice herein required.

SEC. 6252. Any officer failing to comply with the requirements of this act, for each and every offense, shall be subject to indictment, and, if found guilty, shall be punished by a fine of not less than five hundred dollars and by confinement in the penitentiary of the state for a period not less than three nor more than twelve months.

SEC. 6253. Any director who shall fraudulently issue any school warrant shall be guilty of a misdemeanor, and, upon conviction, shall be subject to the penalties enumerated in the preceding section. *Act May 27, 1874.*

SEC. 6254. The county treasurer shall, on or before the first day of September each year, forward to the superintendent of public instruction a certified statement showing the amount, in kind, of public school funds received by him; from what sources they were received; how and for what purposes they have been disbursed, and what amount, in kind, remains in the treasury. *Act March 11, 1881, sec. 8.*

SEC. 6255. The order of any board of directors, properly drawn after the passage of this act, other than those of single school districts in cities and towns, shall be presented to the treasurer of the proper county within sixty days after it was drawn by said board of directors. *Provided*, that if such order is not presented within the above specified time, it shall be rejected and become null and void. All such orders shall be paid in the order of their presentation.

SEC. 6256. If there are no funds with which to pay such order, the treasurer shall indorse the same, "Not paid for want of funds," giving the date and signing his name officially. Within thirty days thereafter, the holder of such order shall present it to the county clerk, who shall issue to him a warrant for the amount of such order at par, payable only at the county treasurer's office, when in funds to the credit of said district. He shall number and record each warrant in the book provided for such purpose, keeping a separate record for each district. *Provided*, that if such order is not presented within the above specified time, it shall be rejected and be null and void (bb): *Act Nov. 30, 1875, sec. 2.*

VIOLATION OF SCHOOL LAWS—DUTY OF PROSECUTING ATTORNEYS.

SEC. 6257. The prosecuting attorney of each judicial district shall, upon being satisfied that any violation of the school laws of this state has been committed by any officer or person, in any county of his district, which renders such officer or person so offending liable to any fine, pain, penalty or forfeiture for damage, without delay, institute in any court of competent jurisdiction such proceedings as are necessary to bring such offender to trial, and secure to the county school district, or person damaged by such violation, the benefits and reliefs to which each or any of them may be entitled; and for such

(†) See SEC. 6176.

(bb) The first section of this act was held unconstitutional in *McCracken v. Moody*, 33—81.

services the prosecuting attorney shall be allowed the same compensation as he is allowed in cases of misdemeanor, which shall be assessed against such offender as cost. *Act March 11, 1881, sec. 10.*

SPECIAL ACT FOR THE REGULATION OF PUBLIC SCHOOLS IN CITIES AND TOWNS.

SEC. 6258. Any incorporated city or town in this state, including the territory annexed thereto for school purposes, may be organized into and established as a single school district in the manner and with the powers hereinafter specified. *Act Feb. 4, 1869, sec. 1.*

SEC. 6259. Upon the written petition of twenty voters of such city or town, praying that the sense of the legal voters of said city or town may be taken on the adoption of this act for the regulation and government of the public schools therein, it shall be the duty of the mayor of such city or town, within five days after the presentation of such petition, to designate and fix a day, not less than seven nor more than fifteen days distant, for holding an election in said city or town for that purpose, and also for the election by ballot, at the same time, of a board of six school directors for said city or town.

SEC. 6260. The mayor shall cause notice of said election to be given by posting notices in at least five public places in said city or town, and by one insertion in such newspapers as may be published in said city or town. The electors at said election desiring to vote in favor of the adoption of this act shall have written or printed on their ballots, "For the school law," and those opposed thereto shall have written or printed on their ballots, "Against the school law;" and, if a majority of the ballots cast at said election shall be "For school law," then, and in that case only, shall such city or town be deemed and held to be a single school district under and in pursuance of this act, and the directors voted for and elected at said election shall qualify and enter upon the discharge of their duties as hereinafter provided.

SEC. 6261. Said election shall be held at the same places and conducted in the same manner as elections for municipal officers of said city or town; and the returns of said election shall be made to the mayor and aldermen of said city or town, who shall declare the result of said election; and, if this act is adopted, they shall cause notice to be given to the persons elected directors.

SEC. 6262. Immediately after receiving notice of their election, and taking the oath of office required of school directors, which oath shall be filed with the clerk or recorder of said city or town, said directors shall meet, and, by lot, determine the length of time of their respective terms of office. Two shall serve until the third Saturday in December next after their election, two for one year thereafter, two for two years thereafter, and on the third Saturday in December next after the first election, and annually on that day thereafter, there shall be chosen, in the same manner, two directors, who shall serve for three years, and until their successors are elected and qualified. Said board shall fill any vacancy that may occur therein until the next annual election for directors, when such vacancy shall be filled by election. *Ib., sec. 2.*

SEC. 6263. Said board of directors shall organize by choosing from their own number a president and secretary, who shall hold their offices until the last Saturday in December, and annually on that day said board shall meet and elect from their number a president and secretary. *Ib., sec. 3.*

SEC. 6264. Said board of directors shall hold a regular meeting on the last Saturday in each month, and may hold stated meetings at such other times and places in said district as they may appoint; four members of said board shall constitute a quorum, but a less number may adjourn from time to time; special meetings thereof may be called by the president, or by any two members of the board, on giving one day's notice of the time and place of the same, and, in case of the absence of the president at any meeting of the board, a president *pro tempore* shall be chosen. The office of any member of said board, as such, who shall, without good cause, fail to attend three consecutive monthly or stated meetings of said board, may be declared vacant by the board. The board may make rules and regulations for their own government and for the dispatch and regulation of the school business and affairs of the district not inconsistent with law. *Ib.*, sec. 4.

SEC. 6265. Said board of directors shall have power to purchase or lease school-house sites, to build, hire or purchase school-houses, and to keep in repair and furnish the same with the necessary seats, desks, furniture, fixtures and fuel, and to insure the same; to fence the school grounds, erect out-houses, provide wells and make all other improvements on the school-house grounds and school-houses belonging to the said district necessary and proper for the comfort, convenience and health of the scholars and the preservation of said property; to hire teachers for all public schools of the district; employ a superintendent of the schools, who may also be principal of any graded or high school that said board may establish; to provide books and apparatus for the schools, and the necessary blank books and stationery for the board, and school registers and the blanks for the teachers; to establish and maintain a sufficient number of primary, graded or high schools to accommodate all the scholars in said district (*); to determine the branches to be taught and the text-books to be used in the several schools of the district (†); to admit pupils not belonging to the district on such terms as they may agree upon with the parents or guardians of said pupils, or the district from whence they came; to appoint a board of three visitors and examiners for the schools of the district, which board shall examine persons applying to teach in any of the schools in said district; *provided*, no teacher shall be employed who does not hold a certificate from the state superintendent or county examiner; to examine, from time to time, the books and the accounts of the county treasurer, so far as the same relate to the several school funds belonging to the district; and when, in the opinion of a majority of the members of said board, the best interests of the district demand a sale or exchange of any real estate or school-house site belonging to the district, they may sell or exchange the same, the deed therefor to be executed by the president of the board upon a majority vote of the whole board of directors authorizing and directing such sale or exchange. *Ib.*, sec. 5.

SEC. 6266. It shall be the duty of said board, as soon as the means for that purpose can be provided, to establish in said district an adequate number of primary schools, so located as best to accommodate the inhabitants thereof; and it shall be the further duty of said board to establish in said district a suitable

(*) But no tax for any purpose can now be levied by the county court without a vote of the electors of the district. *Art. XIV. sec. 3, Const.*; *Cole v. Blackwell*, 38—271.

(†) See SECS. 6167, 6216.

number of other schools of a higher grade or grades, wherein instruction shall be given in such studies as may not be provided for in the primary schools; the number of schools, the grades thereof, and the branches to be taught in each and all of said schools to be determined by said board. It shall be the duty of said board to keep said schools in operation not less than three nor more than ten months in each year. The said board shall have power to make and enforce all necessary rules and regulations for the government of teachers and pupils in said schools. Said board shall also, separately or collectively, together with such persons as they may appoint or invite, visit the schools in the district at least twice in each year, and observe the discipline, mode of teaching, progress of the pupils, and see that the teachers keep a correct register of the pupils, embracing the periods of time during which they attend school, the branches taught, and such other matters as may be required by law or by the instructions of the state superintendent. *Ib.*, sec. 6.

SEC. 6267. No draft or warrant shall be drawn on the county treasurer, except in pursuance of an order of said board; all drafts or warrants on the treasurer shall be signed by the president, or president *pro tempore*, and the secretary, and shall specify the fund on which they are drawn and the use for which the money is assigned. *Ib.*, sec. 8.

SEC. 6268. The secretary shall record all the proceedings of the board in books kept for that purpose; shall make and preserve copies of all reports required by law to be made to the state superintendent of public instruction or county examiner; shall file all papers transmitted to him pertaining to the business of the district; shall make, or cause to be made, the annual enumeration of the youth of the district in the time and manner required by law of school directors, and shall perform such other duties as the board of directors may order and direct; and for his services may be allowed reasonable compensation, to be audited and allowed by a majority of said board. The other members of said board shall receive no compensation for their services. *Ib.*, sec. 9.

SEC. 6269. The title of all real estate and other property belonging, for school purposes, to any city or town organized into a separate school district under this act shall vest, and hereby is vested, in said city or town, as a school district, and shall be under the management and control of the board of school directors for said district as fully and completely as other school property belonging to said district. *Ib.*, sec. 10.

SEC. 6270. All school districts formed under and governed by this act shall be known by the name of the city or town constituting the district, with the words "School District of" prefixed thereto (as, for example, "School District of Little Rock"); and, by such name, may sue and be sued, contract and be contracted with, purchase, acquire, hold and sell property, receive gifts, grants and bequests, and generally shall possess and enjoy all the corporate powers usually possessed by bodies corporate of like character. The style of the board of directors for school districts under this act shall be "Board of School Directors." *Ib.*, sec. 11.

SEC. 6271. The board of school directors of any district organized under this act shall pay and discharge all debts and liabilities lawfully incurred by the several school districts existing under previous law and embraced in the district organized under this act. *Ib.*, sec. 12.

SEC. 6272. Any person elected a director under the provisions of this act who shall fail to take the oath of office and qualify as herein required, or who, after qualifying as such director, shall fail to perform and discharge the official duties incumbent upon him as a director, shall be liable to the same penalties that now are or may be hereafter provided by law against directors of school districts for failing or refusing to qualify, or for neglect of official duty. *Ib.*, sec. 13.

SEC. 6273. The board of directors may fix the term of office and define the duties of the board of visitors and examiners of the public schools in their district, and any person appointed by the board of directors a member of said board of visitors and examiners who shall refuse to act as such, and discharge the duties pertaining to such position, shall forfeit and pay to said district the sum of twenty-five dollars, to be recovered in civil action in the name of said district, and added to the teachers' fund belonging to said district. *Provided*, that no person shall be compelled to serve in that capacity more than three consecutive years. Said board of visitors and examiners shall receive no compensation for their services. *Ib.*, sec. 14.

SEC. 6274. All school districts organized under this act shall have and receive their full proportion and distributive share of the general school fund of the state, in the same manner and according to the same rule as it is or may be apportioned to other districts. *Ib.*, sec. 15.

SEC. 6275. It shall be the duty of the state superintendent and county examiners to make such suggestions and recommendations to the board of directors in relation to organizing and conducting the public schools in the districts organized under this act as they shall deem important.

SEC. 6276. The provisions of the general school laws of the state which are now or may hereafter be in force, when not inapplicable, and so far as the same are not inconsistent with and repugnant to the provisions of this act, shall apply to districts organized under this act; and such provisions of said laws as are inconsistent with and repugnant to the provisions of this act, and inapplicable to districts organized thereunder, shall have no operation, force or effect in such districts. The county court shall annex contiguous territory to single school districts, under the provisions of this act, when a majority of the legal voters of said territory and the board of directors of said single district shall ask, by petition, that the same shall be done. *Ib.*, secs. 16, 17.

SCHOOL LANDS.

SEC. 6277. Whenever the inhabitants of any congressional township in this state shall desire the sale of the sixteenth section of such township, or of any land substituted therefor, they may, by written petition, signed by a majority of the male inhabitants of such township, require the collector of taxes of the county wherein such school land is situated to sell the same. *Act March 22, 1881, sec. 1.*

SEC. 6278. Upon the reception of such petition, the collector shall ascertain that it is signed by a majority of the male inhabitants of such township, and shall immediately proceed to divide the land into forty-acre tracts; and, after making such division, a statement or plat of the same and number of each tract shall be made, so that the boundaries may be defined and ascer-

tained, which statement or plat of the sections shall be used as a guide in advertising and selling said lands. *Provided*, that the collector may, when necessity requires it, call the county surveyor of his county to assist in such survey and division; and he shall be allowed and paid, out of the interest of the funds arising from the sale of such school lands by the said collector, such compensation as he is allowed by law for similar services; and the receipt of such surveyor to said collector shall be a sufficient voucher for the money so paid. *Act April 12, 1869, sec. 4, and act March 22, 1881, sec. 2.*

SEC. 6279. In subdividing school lands for sale, no tract shall contain more than forty acres; and the division may be made into town or village lots, with roads, streets or alleys between them. *Ib., sec. 5.*

SEC. 6280. In all sales of school lands, such sales shall commence at the north-east corner tract, which shall be numbered one, and shall be made in tracts of not more than forty acres each, so long as there shall be as much as forty acres remaining to be sold. *Act July 18, 1868, sec. 2.*

SEC. 6281. The collector shall cause each tract or subdivision of such school land to be appraised at a fair value by three disinterested house-holders of the county, each of whom shall take an oath, which shall be indorsed upon the appraisement, that he does not desire or intend to buy said land, or any part thereof, and that he will not, directly or indirectly, be or become interested in the purchase thereof at the sale to be made by the collector. Such appraisement shall be returned to the collector.

SEC. 6282. The collector shall then give notice that he will sell the said school land at the court-house door of the county, on the first day of the next term of the county court, upon the terms prescribed by law. Such notice shall be published in some newspaper published in the county where the land is situated at least four weeks before the day of sale. If there be no newspaper published in said county, then the collector shall post up written notices in at least six of the most public places of the county four weeks before the day of sale. The collector shall also, in either case, put up a copy of the notice upon the school-house situated on the land, if there be one thereon; if not, at the most public place on the land.

SEC. 6283. Upon the day of sale the collector shall offer the lands at public auction in separate subdivisions, beginning with number one and ending with the last mentioned division. Such sale shall be made between the hours of 12 M. and 3 P. M., but may be continued from day to day, at the same place and between the same hours, until all have been sold or offered. The sale shall be made upon the terms of one-fourth cash, the balance payable in one, two and three years from date, in equal payments, bearing interest at the rate of eight per centum per annum from date of sale until paid. The purchaser shall at once pay the cash payment and execute and deliver to the collector his notes, payable to the treasurer of the county and his successors in office, for the deferred payments and interest.

SEC. 6284. If any bidder shall fail to perfect his bid, by paying the cash payment and executing his notes, the collector shall immediately resell the land, and the bidder shall be responsible for the difference between his bid and the price at which the land sold, which may be recovered from him by the collector in an action for the use of the township.

SEC. 6285. No tract or subdivision shall be sold for less than three-fourths

of its appraised value. If any tract offered is not sold, it may be offered again, upon like notice, upon the first day of the next or any succeeding term of the county court, and be so offered until sold, without a new petition.

SEC. 6286. The purchaser shall not make merchandise of the wood on said land, or remove, or permit it to be removed or cut down, save for improvements on the land; and bond and security shall be given for the faithful performance of this requirement until the full amount of the purchase money is paid.

SEC. 6287. The collector shall, without delay, report all sales to the county court, which may reject or confirm the same. If any sale be rejected, the court may order the collector to again advertise and offer the land, and may specify the minimum price at which the tract may be sold, not to be less than two-thirds of appraised value. If the sale be confirmed, the collector shall execute and deliver to the purchaser a certificate in the following form:

"I, _____, collector in and for the county of _____, certify that _____ has purchased lot No. _____, of section _____, in township _____, range _____, for the price of _____ dollars, of which he has paid cash _____ dollars, and has executed his three notes, each for _____ dollars, maturing at one, two and three years from this date, bearing interest at the rate of eight per centum per annum from date. If said notes and interest are paid at maturity, I, or my successor in office, will convey said lot of land to said _____; but if either of said notes be not paid at maturity, said _____ shall surrender to me possession of said land, and shall forfeit his purchase and the money paid.

A B,

"Collector of _____ County."

The purchaser shall thereupon be entitled to take possession of the land and to improve the same; but if he shall fail to pay either note at maturity, he shall forfeit his purchase and all money paid. If the sale be rejected by the county court, the collector shall return to the purchaser his notes and money. In all cases proper orders of confirmation or rejection shall be entered of record by the court.

SEC. 6288. Out of the cash payment the collector shall pay costs of advertising and costs of orders of confirmation or rejection of sale. He may also retain two per cent. of the cash payment for his services. The residue of money and notes he shall deliver to the county treasurer, who shall keep the same separate as the property of the township to which the land belongs, under direction of the county. The treasurer shall lend all moneys belonging to townships in his hands, keeping each and the security for each separate by townships, taking as security for the money loaned a note, with one responsible person as security, and a trust conveyance of real estate worth, excluding improvements, at least double the sum loaned thereon; interest thereon to be paid annually at ten per cent. Loans may be made for five years, but on failure to pay any installment of interest, the principal shall become due, and the land taken as security shall be subject to sale for the payment thereof, whether so expressed in the deed or not.

SEC. 6289. On the day that the apportionment of school funds is made by the county court, the treasurer shall report to the court the amount of interest in his hands belonging to each congressional township in his county, and the court shall apportion the interest so belonging to each township to and among the schools kept or taught in such townships.

SEC. 6290. If any purchaser shall fail to pay his notes, or either of them, the treasurer or his successor in office shall at once notify the county collector of such default, and thereupon the collector shall immediately and without warrant or writ enter upon and take possession of the tract upon which default of the purchase money has been made, and shall advertise and sell the same in the same manner that the sale in the first instance was made, except that no petition for sale shall be necessary. *Provided*, that if the purchaser shall pay the amount of the note due, all interest thereon, the costs of advertising and a fee of two per cent. of the amount due to the collector, upon or before the day of sale, the sale shall not be made, and the collector shall redeliver possession to the purchaser.

SEC. 6291. When any purchaser makes full payment of all purchase money and interest, the treasurer shall give him a certificate that full payment has been made, and, upon presentation of such certificate to the county collector for the time being, the collector shall, at the expense of the purchaser, convey the tract mentioned in the treasurer's certificate to such purchaser, his heirs and assigns.

SEC. 6292. The county treasurer shall receive for his compensation two per cent. of the interest collected, and no more. *Act March 22, 1881, secs. 3-10.*

SEC. 6293. As soon as practicable, the commissioner of state lands shall turn over to the county clerks of the several counties in this state all books, maps, papers, surveys and evidences of debt pertaining to the sixteenth section in the several counties, and all collectors shall pay over to the treasuries of their respective counties all funds in their hands, or that may come into their hands, arising from the sale of the sixteenth section. *Ib., sec. 11, as amended by act March 10, 1883.*

SEC. 6294. Where the county line runs through a congressional township, the sheriff shall pay over to the county treasurers of each of the counties in which a part of such township is situated a *pro rata* share of any moneys arising from the sale of the sixteenth section, according to the number of acres in each county so interested. *Act March 10, 1883, sec. 2.*

PATENTS.

SEC. 6295. When the purchaser of any portion of the common school lands has heretofore assigned, or may hereafter assign, the certificate of purchase of such land, the title thereof may be made directly to the last assignee of such certificate of purchase, upon full payment of all the purchase money and interest due on said land. *Act April 12, 1869, sec. 10.*

SEC. 6296. If any person who shall have purchased any portion of the sections of school lands from the collector of any of the counties of this state, and paid one-fourth the purchase money therefor, and received a bond for title from such collector, shall die before such payment is fully made, and the executor, administrator, guardian or legal representative of such deceased person shall pay or cause to be paid the balance, if any, that shall be due to the collector on said purchase, upon the certificate of the collector of the proper county that the whole of the purchase money, with all the interest due thereon, has been

fully paid, the auditor shall forthwith execute a deed, as is now required by law, to the heirs at law of such deceased person (§). *Ib.*, sec. 11.

SEC. 6297. The land thus conveyed to the heirs shall stand charged with the amount of money necessarily advanced to the school fund, in order to procure title, and shall, in other respects, be chargeable with the rights and incumbrances that would have attached had it descended regularly to the same heirs. *Ib.*

SEC. 6298. All patents issued for sixteenth section, or any part thereof, or common school land during the war of the rebellion, and all the official acts of the officers of this state, in regard to such lands, during the said war, and also all deeds made by the common school commissioners of the several counties in compliance with an act of the legislature of the state, entitled, "An act to relieve certain citizens of Arkansas who purchased school lands," passed March 4, 1867, are hereby confirmed, ratified and made valid, and full faith and credit shall be given to said patents, deeds and official acts in all the courts of this state. *Provided*, nothing herein shall be construed to prevent the setting aside of any of said deeds or patents for actual fraud or mistake.

SEC. 6299. Any right, title or interest which the State of Arkansas may have acquired, or holds by virtue of any judgment, decree, execution or sale of any court in this state, in lands for which patents or deeds have been made and issued as mentioned in section 6298, is hereby vested in the proper owners thereof under such deeds or patents.

SEC. 6300. The attorney representing the State of Arkansas is hereby instructed and required to dismiss all suits now pending for school lands where patents or deeds have been made therefor, as specified in section 6298, or if it does not appear on the face of the pleadings filed that such patents or deeds have been made, then the patent or deed may be pleaded in bar of the suit, or the court may dismiss the suit on exhibition and profert of such deed or patent; and where judgment or decree has been entered, and sale has not been made, the state's attorney shall enter satisfaction in full thereof on the presentation to him of such deed or patent.

SEC. 6301. If any purchaser of school lands shall have paid the purchase money thereof, and received no deed or patent therefor, or if any person now owing for school lands bought shall hereafter pay out his indebtedness therefor, and shall produce to the auditor satisfactory evidence of such payment, the auditor shall be, and he is hereby, authorized and required to execute to such person, or to his legal representative, a deed conveying all the right, title and interest of the State of Arkansas in such lands; but if payment has not been made before suit is begun, the purchaser shall also pay the costs of the suit. *Provided*, this act shall only apply to purchases of school lands made before the passage of this act. *Act Dec. 14, 1875.*

LEASE OF SCHOOL LANDS.

SEC. 6302. All school lands in any county in this state susceptible of cultivation shall be leased by the county collector of said county from the first to the tenth of January in each year. *Act April 12, 1869, sec. 12.*

SEC. 6303. The manner and terms of leasing said lands shall be by pub-

(1) See SEC. 6301.

lic outcry to the highest bidder, the lessee paying one-half the amount of rent in cash at the time of leasing and the balance at the end of the year. *Ib.*

SEC. 6304. At least twenty days' public notice of the time and place of offering such lands for rent or lease shall be given by said collector by publishing the same in the newspapers of the county and by posting up hand-bills at the most prominent points throughout the county. *Ib.*

SEC. 6305. If any school lands offered for rent or lease at the time and in the manner above indicated shall not bring such price as the collector shall think a reasonable rent therefor, he shall be authorized to rent the same by private contract for the ensuing year, or for a longer term if he shall deem it expedient. *Ib.*

SEC. 6306. The occupants of school lands prior to the passage of this act shall be required to pay a reasonable annual rental during the time said lands have been so occupied. *Ib.*

SEC. 6307. The lessees of school lands shall be subject to the same provisions governing the lessees of other property. *Provided*, that it shall not be rented for a less amount than was offered at public sale. *Ib.*

CHAPTER CXXXVI.

SEALS.

SECTION

GREAT SEAL OF STATE.

6308. Description of.

6309. Seal of secretary of state, auditor and treasurer.

SECTION

6310. Official seals, what impressions, etc., to present.

SECTION 6308. It shall be the duty of the governor to procure a seal for the State of Arkansas, which shall present the following impressions, devices and emblems, to wit: An eagle at the bottom, holding a scroll in its beak, inscribed "Regnant Populi," a bundle of arrows in one claw and an olive branch in the other; a shield covering the breast of the eagle, engraved with a steamboat at top, a bee-hive and plow in the middle, and sheaf of wheat at the bottom; the Goddess of Liberty at the top, holding a wreath in her right hand, a pole in the left hand, surmounted by a liberty cap, and surrounded by a circle of stars, outside of which is a circle of rays; the figure of an angel on the left, inscribed "Mercy," and a sword on the right hand, inscribed "Justice," surrounded with the words "Seal of the State of Arkansas."

SEC. 6309. The secretary, auditor and treasurer of state shall each have a seal of office, presenting the impressions, devices and emblems presented by the seal of state. *Provided*, that the surrounding words on the secretary's seal shall be "Seal of the Secretary of State, Arkansas;" on the auditor's seal, "Seal of the Auditor of State, Arkansas," and on the treasurer's seal, "Seal of the Treasurer of State, Arkansas."

SEC. 6310. All official seals used in the state shall present the impressions, emblems and devices presented by the great seal of state, except the surrounding words, which shall be such as to indicate the office to which they may severally belong. *Act May 3, 1864, secs. 1, 2, 3.*

CHAPTER CXXXVII.

SENATORS (a).

SECTION

6311. Certificate of election.

SECTION

6312. Certificate of appointment.

SECTION 6311. When an election for senator in the congress of the United States is made in pursuance of the constitution and laws of the United States, the president of the senate and speaker of the house of representatives shall certify the same to the governor, who shall deliver to the person elected senator a certificate of his election, under the seal of the state, addressed to the president of the senate of the United States, which certificate shall be countersigned by the secretary of state. Such certificate may be in the following form :

STATE OF ARKANSAS, ss.

To the President of the Senate of the United States :

I, ———, governor of the State of Arkansas, do hereby certify that the general assembly of this state, on the ——— day of ———, one thousand

(a) The following is the act of congress regulating the election of senators in congress :

SECTION 1. The legislature of each state which shall be chosen next preceding the expiration of the time for which any senator was elected to represent said state in congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a senator in congress, in the place of such senator so going out of office, in the following manner : Each house shall openly, by a *viva voce* vote of each member present, name one person for senator in congress from said state, and the name of the person so voted for who shall have a majority of the whole number of votes cast in each house shall be entered on the journal of each house by the clerk or secretary thereof ; but, if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal. At twelve o'clock, meridian, of the day following that on which proceedings are required to take place as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and, if the same person shall have received a majority of all the votes in each house, such person shall be declared duly elected senator to represent said state in the congress of the United States ; but, if the same person shall not have received a majority of the votes in each house, or if either house shall have failed to take proceedings as required by this act, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for the purpose aforesaid, and the person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected ; and, in case no person shall receive such majority on the first day, the joint assembly shall meet at twelve o'clock, meridian, of each succeeding day during the session of the legislature, and take at least one vote, until a senator shall be elected.

SEC. 2. Whenever, on the meeting of the legislature of any state, a vacancy shall exist in the representation of such state in the senate of the United States, said legislature shall proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy, in the manner hereinbefore provided for the election of a senator for a full term ; and, if a vacancy shall happen during the session of the legislature, then on the second Tuesday after the legislature shall have been organized and shall have notice of such vacancy.

SEC. 3. It shall be the duty of the governor of the state from which any senator shall have been chosen as aforesaid to certify his election, under the seal of the state, to the president of the senate of the United States, which certificate shall be countersigned by the secretary of state of the state.

Approved July 25, 1866.

And see *Art. I, sec. 4, Const. U. S., and note.*

eight hundred and ———, did, in pursuance of the constitution and laws of the United States of America in that behalf provided, duly elect ——— a senator in the congress of the United States.

Given under my hand and the great seal of the State of Arkansas, at Little Rock, ——— day of ———, one thousand eight hundred and ———.

By the governor.

Attest: ———,

Secretary of State.

SEC. 6312. When the governor shall, by virtue of the constitution of the United States, make a temporary appointment of a senator, he shall deliver to such senator a credential in the words following, to wit:

STATE OF ARKANSAS, ss.

A B, who was chosen United States senator of this state, in pursuance of the constitution of the United States of America, having died (resigned or otherwise, as the case may be) during the recess of the general assembly of the state: Therefore, I, ———, governor of said state, have thought fit to appoint ——— to fill the said vacancy.

Given under my hand and the seal of the said state this ——— day of ———, 18—.

By the governor.

Attest: ———,

Secretary of State.

Act July 25, 1866, 14 U. S. Stat., 243, and Rev. Stat., chap. 138.

CHAPTER CXXXVIII.

SHERIFFS.

SECTION

6313. *Ex officio* collector; term of office.

BOND.

6314. Amount of, and when given.

6315. To be filed and recorded.

6316. Not void for want of approval.

6317. Failure to give bond vacates office.

DEPUTIES.

6318. May appoint one or more.

6319. Appointment, how made.

6320. Appointment and approval filed where.

6321. Powers of.

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6322. Persons offending in his presence may be arrested.

6323. Recognizance in pursuance of, to be certified.

SECTION

6324. Duty to quell assaults, etc.

6325. To apprehend felons and other offenders.

GENERAL DUTIES.

6326. To execute all process directed to him.

6327. To attend upon all courts held in his county.

6328. To perform all duties required of him by law.

WHAT TO INDORSE ON, AND POWERS IN EXECUTION OF PROCESS.

6329. Day and hour of receipt to be indorsed on.

6330, 6331. May enter or break buildings or inclosures, when.

6332. That officer was kept off by force, insufficient return.

MISDEMEANOR IN OFFICE.

6333. What constitutes.

6334. Upon conviction, office declared vacant.

ELECTION, TERM OF OFFICE, ETC.

SECTION 6313. The qualified electors of each county shall elect one sheriff, who shall be *ex officio* collector of taxes, unless otherwise provided by law (a), for the term of two years, with such duties as are now or may be prescribed by law. *Art. VII, sec. 46, Const.*

BOND.

SEC. 6314. Each sheriff shall, within fifteen days after the receipt of his commission, enter into bond to the State of Arkansas, in any sum not less than five thousand nor more than fifty thousand dollars, with good and sufficient security (*), to be approved as required by sections 4771 and 4772, conditioned that he will well, truly and faithfully discharge and perform the duties of his office (†).

SEC. 6315. Such bond shall be filed and recorded in the recorder's office of the county.

SEC. 6316. No bond entered into by a sheriff shall be deemed void for not having the approval indorsed thereon.

SEC. 6317. If any sheriff shall fail to enter into bond within the time prescribed in this act, the office shall be deemed vacant, and it shall be the duty of the county clerk to notify the governor of such vacancy. *Rev. Stat., chap. 140.*

DEPUTIES.

SEC. 6318. Each sheriff may appoint one or more deputies, for whose official conduct he shall be responsible.

(a) See *Falconer v. Shores*, 37—386.(*) See *Hodgkin v. Holland*, 34—203.

(†) As to collector's bond, see SECS. 5717-5720.

SEC. 6319. Such appointment shall be in writing, under the hand of the sheriff, and approved by the circuit court, or the judge thereof in vacation, or by the county court.

SEC. 6320. Such approval shall be indorsed on said appointment, which, with such indorsement, shall be filed and recorded in the recorder's office in the county.

SEC. 6321. The deputy sheriff shall possess all the powers of his principal, and may perform such duties as are required by law to be performed by the sheriff (b). *Rev. Stat., chap. 140, and act Dec. 11, 1852.*

SHERIFF TO BE CONSERVATOR OF THE PEACE.

SEC. 6322. Each sheriff shall be a conservator of the peace in his county, and shall cause all offenders against the laws of this state, in his view or hearing, to enter into recognizance to keep the peace and appear at the next term of the circuit court of the county; and, on the failure of the offender to enter into recognizance, to commit him to jail.

SEC. 6323. He shall certify to the clerk of the circuit court all recognizances taken by him.

SEC. 6324. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies.

SEC. 6325. He shall apprehend and commit to jail all felons and other offenders.

GENERAL DUTIES.

SEC. 6326. He shall execute all process directed to him by legal authority (c).

SEC. 6327. He shall attend each regular and special term of the county court, and upon all courts held in his county.

SEC. 6328. He shall perform all other acts and things required of him by law. *Rev. Stat., chap. 140, and act April 3, 1873.*

WHAT TO INDORSE ON, AND POWERS IN EXECUTION OF PROCESS.

SEC. 6329. The sheriff shall indorse upon every summons, order of arrest, or for the delivery of property, or of attachment or injunction, in his hands, the day and hour it was received by him.

SEC. 6330. A sheriff having an order of attachment, or for the delivery of property, may enter any building or inclosure containing the property to take it; and, if necessary for this purpose, may break the building or inclosure, having first publicly demanded the property.

SEC. 6331. A sheriff having an order to arrest may enter any house or inclosure in which the party to be arrested may be, for such purpose; and, if necessary, may break the house or inclosure, after having informed any one therein of his object, or, where no person appears to whom such information can be given, after having publicly demanded the person to be arrested; and,

(b) Appointment of deputy expires with the term of the principal. On re-election of principal, new appointment necessary. *Greenwood v. State*, 17—332.

(c) See *Blevins v. State*, 21—53.

in either case, after having given sufficient time for the house or inclosure to be opened.

SEC. 6332. It shall not be a sufficient return of any process that the officer was kept off by force from executing it. *Civil Code, secs. 776-779.*

MISDEMEANOR IN OFFICE.

SEC. 6333. If any sheriff shall fail or refuse to perform any of the duties required by law to be performed by him, he shall be deemed guilty of a misdemeanor in office, and, on conviction thereof, shall be removed from office.

SEC. 6334. Upon such finding, the court before whom the trial was had shall declare the office of such sheriff vacant (d), and cause a record thereof to be made, a copy of which shall be transmitted to the governor. *Rev. Stat., chap. 140.*

CHAPTER CXXXIX.

STATUTES.

SECTION	CONSTRUCTION OF.	SECTION	
6335.	Plural includes singular number.	6348.	Definition of "personal property."
6336.	Singular includes plural number.	6349.	"property."
6337.	To be liberally construed.	6350.	"clerk."
6338.	Above rules apply in all cases, unless.	6351.	"sheriff."
6339.	Corporation, company or person, includes what.	6352.	"coroner," "justice," "constable."
6340.	Effect of decision of circuit court declaring statute valid.	6353.	"personal representative."
	REPEAL AND REVIVAL OF.	6354.	"foreign corporation."
6341.	Repeal of repealing statute, rule.	6355.	"other country."
6342.	of criminal statute, rule.	6356.	"United States."
6343.	pending proceedings not affected by.	6357.	"person of unsound mind."
	RULES OF CONSTRUCTION OF THE "CODE."	6358.	"oath," "sworn."
6344.	Certain words defined.	6359.	"month."
6345.	Signification of terms used in code.	6360.	"process."
6346.	Definition of action for the recovery of money.	6361.	"writ."
6347.	"real property."	6362.	Code to be liberally construed.
		6363.	repeals all inconsistent laws, etc.
		6364.	Rule in amending code.
		6365.	Ministerial officer may act by deputy.
		6366.	Rule of the majority.
		6367.	for computing time.

CONSTRUCTION OF (*).

SECTION 6335. Whenever, in any statute, words importing the plural number are used in describing or referring to any matter, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not be used.

(d) See, to same effect, SEC. 2325.

(*) See *Roe's Digest*, p. 739; *Little Rock & Fort Smith Railroad Co. v. Howell*, 31-119; *Haney v. State*, 34-263; *Whittington, ex parte*, *Ib.*, 394; *Neal v. Burrows*, *Ib.*, 494; *Reynolds v. Holland*, 35-56; *Morrison v. State*, 40-448.

SEC. 6336. When any subject matter, party or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

SEC. 6337. All general provisions, terms, phrases and expressions used in any statute shall be liberally construed, in order that the true intent and meaning of the general assembly may be fully carried out.

SEC. 6338. The rules prescribed in the three preceding sections shall apply in all cases, both civil and criminal, unless it be otherwise specially provided, or unless there is something in the context or subject matter repugnant to such construction. *Rev. Stat., chap. 129, secs. 20-23.*

SEC. 6339. The words "corporation, company or person," when they occur together in any statute defining and punishing crimes, shall be construed to include the United States of America and the several states and territories thereof, and all the several branches of the government of either of them, and of all public and private bodies, politic and corporate, and all partnerships and individuals. *Act Dec. 17, 1838, sec. 6.*

SEC. 6340. Whenever, by the decision of any circuit court, a construction may be given to any penal or other statute, every act done in good faith in conformity with such construction after the making of such decision, and before the reversal thereof by the supreme court, shall be so far valid that the party doing such act shall not be liable to any penalty or forfeiture for any such act that shall have been adjudged lawful by such decision of the circuit court. *Rev. Stat., chap. 117, sec. 40.*

REPEAL (a) AND REVIVAL OF.

SEC. 6341. When a statute shall be repealed, and the repealing statute shall afterward be repealed, the first statute shall not thereby be revived, unless by express words. *Rev. Stat., chap. 146.*

SEC. 6342. When any criminal or penal statute shall be repealed, all offenses committed or forfeitures accrued under it while it was in force shall be punished or enforced as if it were in force, notwithstanding such repeal, unless otherwise expressly provided in the repealing statute (aa). *Act Dec. 21, 1846.*

SEC. 6343. No action, plea, prosecution or proceeding, civil or criminal, pending at the time any statutory provisions shall be repealed, shall be affected by such repeal, but the same shall proceed, in all respects, as if such statutory provision had not been repealed. *Rev. Stat., chap. 129, sec. 31.*

RULES OF CONSTRUCTION OF THE "CODE."

SEC. 6344. Words used in the code in the past or present tense include the future as well as the past and present. Words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a

(a) As to repeals by implication, see *Mears v. Stewart*, 31—17; *Babcock v. Helena*, 34—499; *Coats v. Hill*, 41—149.

(aa) See *McCuen v. State*, 19—634; *Volmer v. State*, 34—487; *Cloud v. State*, 36—151.

natural person (b); writing includes printing or printed paper; signature or subscription includes mark, when the person can not write, his name being written near it and witnessed by a person who writes his own name as a witness.

SEC. 6345. The terms explained in the following sections of this chapter have in the code the significations attached to them, unless it is otherwise apparent from the context.

SEC. 6346. An action for the recovery of money includes an action for the recovery of damages, as well as money due by contract.

SEC. 6347. The words "real property" mean lands, tenements and hereditaments.

SEC. 6348. The words "personal property" include money, goods, chattels, things in action and evidences of debt.

SEC. 6349. The word "property" includes property, real and personal.

SEC. 6350. The word "clerk" means the clerk of the court in which the action is brought or is pending, or in which the proceeding is had; and the words "clerk's office" mean his office. *Civil Code, secs. 837-843.*

SEC. 6351. The word "sheriff" means the sheriff of the county in which the action is brought or is pending, or in which the proceeding is had, or to whom the process is directed; and, where it is used in connection with any process or order, or the execution thereof, or of any ministerial act, shall be taken to signify also any other officer to whom the process or order may be directed, and who may be acting under it, or by whom the ministerial act may be performed.

SEC. 6352. The words "coroner," "justice" and "constable" mean officers of the county in which the action is brought or is pending, or in which the proceeding is had, or to whom the process is directed.

SEC. 6353. The words "personal representative" signify the executor or administrator of a deceased person, or the officer or other person appointed to take charge of his estate.

SEC. 6354. A "foreign corporation" is one created by the laws of some other state or country.

SEC. 6355. The words "other country" signify any part of the world out of this state.

SEC. 6356. The words "United States" embrace every state in the Union, all the territories and the District of Columbia.

SEC. 6357. The words "person of unsound mind" include every person who is an idiot, lunatic or deranged.

SEC. 6358. The word "oath" includes affirmation in any case in which it may be substituted for an oath, and in like cases the word "sworn" includes "affirmed."

SEC. 6359. The word "month" means calendar month.

SEC. 6360. "Process" is a writ or summons issued in the course of judicial proceedings.

SEC. 6361. "Writ" is an order or precept in writing, issued by a court, clerk or judicial officer.

SEC. 6362. The rule of common law that statutes in derogation thereof are to be strictly construed shall not be applied to the code. The provisions of the

(b) See *Boone County v. Keck*, 31—387.

code, and all proceedings under it, shall be liberally construed, with a view to promote its object and to assist the parties in obtaining justice.

SEC. 6363. All statutes and laws heretofore in force in this state in any case provided for by the code, or inconsistent with its provisions, are hereby repealed and abrogated (bb); but this repeal does not revive any statute or law which may have been repealed or abolished by the statutes or laws hereby repealed; nor does it affect any right already existing, or any proceeding already taken, except as provided in the code.

SEC. 6364. No act shall have the effect to amend or repeal, or be construed as amending or repealing, any title, chapter, article, section, clause or provision of the code unless such intention be expressly stated, and the title, chapter, article or section shall be particularly referred to and recited in the act amending or repealing the same. *Ib.*, *secs.* 845-858.

SEC. 6365. Any duty enjoined by the code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy. *Ib.*, *sec.* 781.

SEC. 6366. An authority conferred upon three or more persons may be exercised by a majority of them; and a majority of three or more persons may do any act directed to be performed by them (c). *Ib.*, *sec.* 782.

SEC. 6367. Where a certain number of days are required to intervene between two acts, the day of one only of the acts may be counted. *Ib.*, *sec.* 784.

CHAPTER CXL.

STATE SOVEREIGNTY.

SECTION

- 6368. Penalty for holding commission, etc., under foreign government.
- 6369. Penalty for favoring or encouraging extension of foreign jurisdiction over any part of this state.
- 6370. Power of sheriff to call out militia, and penalty for officers refusing to obey.
- 6371. Militia so called out, how to be armed, equipped, paid, etc.

SECTION

- 6372. Requisitions under control of governor; militia, how mustered into service; pay, term of service of.
- 6373. When commanding officer may draft.
- 6374. Persons summoned in aid of sheriff, and refusing; penalty for, and how recovered.
- 6375. Persons arrested to give recognizance or be committed; duty of sheriffs and jailers.
- 6376. Fees under this act, what and how collected.
- 6377. Power of governor.

SECTION 6368. Every person in this state who may hold any commission, office or authority, or attempt to hold or exercise any office or authority, under any foreign government, within this state, shall be deemed guilty of a misdemeanor, and liable to indictment therefor in the circuit court of the proper

(bb) See *Whitehead v. Wells*, 29—99.

(c) See *Holland v. Davies*, 36—446.

NOTE.—The revised statutes were put in force, by proclamation of the governor, March 20, 1839. *Act Dec.* 14, 1838.

By act approved July 22, 1868, the code of practice, civil and criminal, went into effect on that date; but no proceeding before the first day of January, 1869, was to be invalidated thereby; and on that day the code

county, and, on conviction thereof, shall be fined in a sum not less than one hundred dollars, nor more than one thousand dollars, and be imprisoned not less than one month, nor more than twelve months.

SEC. 6369. Every person within this state who may, by any act or deed, or by words, encourage or favor the extension and exercise of the laws and jurisdiction of any foreign power over any part or portion of this state, however small, shall be deemed guilty of a misdemeanor, and, on conviction thereof, by indictment, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, and be imprisoned not less than one month, nor more than twelve months.

SEC. 6370. The sheriff of any county shall not only have power to call to his assistance every man to aid him in discharge of his duty in the execution of the laws of this state, but shall be, and is hereby, authorized and empowered to make a requisition upon any officer commanding a regiment or battalion of militia, or brigadier or major-general of militia, within this state, for such number of men as may be necessary to suppress all resistance to his authority in the execution of the laws of this state within any county (a); and any officer refusing to furnish the quota of men thus required may be arrested, tried by a court-martial, and cashiered therefor.

SEC. 6371. Such bodies of militia called out in aid of the sheriff shall be mounted, if practicable, shall furnish their own horses and arms, be organized according to the laws of the state, have their provisions and supplies furnished at the expense of the state, and receive the same pay as infantry soldiers in the United States service, with the addition of twelve dollars a month for the use and risk of the horse upon which each militiaman may be mounted.

SEC. 6372. Such requisitions so made by the sheriff shall always be subject to be curtailed, enlarged or countermanded, or others made, by the governor; and such bodies of militia shall, in all cases, be organized and mustered into service by some commanding officer of a regiment or separate battalion, or brigadier or major-general, or by the governor, or some officer of the governor's staff, under his orders; and the certificate of the mustering officer, together with a certificate of the commanding officer of the corps, countersigned by the sheriff, of the period and character of such service, or a regular muster-roll and pay-roll, certified in like manner, shall, in all cases, be necessary to authorize such militiamen to draw their pay from the proper disbursing officer. Such militia shall in no case be retained in service more than six months, unless by their consent.

SEC. 6373. Where such requisitions can not be filled by volunteer enlistment, the commanding officer shall proceed to draft a sufficient number, according to the law in such case provided; and officers, non-commissioned officers and musicians shall be entitled to pay according to rank.

SEC. 6374. Any resident or citizen of any county, who may be summoned by said sheriff to aid him in the execution of process therein, or in any dis-

was to take effect, and all proceedings were to conform to its provisions. *Civil Code, sec. 890, and Crim. Code, sec. 411.*

The criminal code, as re-enacted and amended by act of March 27, 1871, took effect June 23, 1871.

The amendments to the civil code, by act of April 24, 1873, took effect on that date. *Civil Code, sec. 502, as amended 1873.*

The amendments to the criminal code, by act of April 25, 1873, took effect July 24, 1873.

(a) But see art. XI, sec. 4, *Const.*

charge of official duty, and who shall neglect or refuse to render such aid, shall, on conviction thereof, by indictment, be fined not less than one hundred dollars, nor more than one thousand dollars, and be imprisoned not less than one month, nor more than twelve months; and, on such refusal to aid, the sheriff may immediately seize such offender and commit him to prison, unless he enter into recognizance according to law.

SEC. 6375. When said sheriff may arrest any offender against any of the provisions of this act, unless he shall enter into a recognizance, with two or more sufficient securities, in at least double the highest sum fixed as a penalty for the offense, it shall be his duty immediately to commit such offender to prison for safe-keeping, and he shall have power to send him to any prison within this state; and it is hereby made the duty of all jailers to receive and safely keep all such prisoners as may be thus committed to their respective charge; and all recognizances thus taken shall, in addition to the usual condition, contain an obligation that the offender will, in the mean time, demean himself as an orderly citizen and faithfully obey the laws of this state.

SEC. 6376. The sheriff shall, for services rendered under this act, or in connection with any duty specified herein, or in any manner relating to any of the offenses herein specified, receive in each and every case double the amount of fees and double the amount of mileage allowed by law to sheriffs for similar services; and, when duties required by this act to be performed are different from any defined services for which fees are fixed by law, they shall be assimilated to those which bear most resemblance to them, and double fees and mileage allowed accordingly. Such fees, in cases of indictment and conviction, shall be paid by the offender, if he have an estate sufficient. Where the estate or the offender is insufficient, and in all other cases, such fees of the sheriff shall be paid out of the state treasury; and, in all cases where they are to be paid by the state, they shall be first allowed and certified by the judge of the circuit court of the county. All constables, justices of the peace, clerks and other civil officers entitled to fees shall exact and receive double fees for all services connected with the offenses or duties prescribed by this act, to be paid and collected as in ordinary cases.

SEC. 6377. The governor is hereby authorized, and it is made his duty, to superintend generally every thing required to be done by this act, and see that every branch of the service is properly conducted, and to see that the laws of this state are fully and efficiently enforced throughout the utmost limits thereof; and, if the laws can not be enforced by ordinary means, nor by the means hereinbefore prescribed, it is hereby made the duty of the governor, as soon as it is made to appear to be necessary, to order out, organize and embody such number of the militia of this state as the service may require, and with military force take possession of the country, and expel therefrom, or seize and bring to trial, all disorganizers and disaffected persons, without delay, and keep possession of all such country by force until order is restored, and the sovereignty and laws of Arkansas acknowledged and obeyed. *Rev. Stat., chap. 145.*

CHAPTER CXLI.

STALLIONS AND JACKS.

SECTION

6378. Seed horse, unaltered mule or jack found running at large, penalty for.
6379. May be taken up, and what done with.

SECTION

6380. Castration, how done.
6381. If animal can not be taken up, may be killed.

SECTION 6378. If any seed horse or any unaltered mule or jack, over the age of two years, be found running at large, the owner shall be fined, for the first offense, three dollars, and for every subsequent offense not exceeding ten dollars, to be recovered by civil action in the name of any person who shall sue therefor, one-half to his own use and the other to the use of the county; and the owner shall also be liable for all damages that may be sustained by the running at large of any such seed horse, jack or mule.

SEC. 6379. Any person may take up any such seed horse, mule or jack found running at large, and, if not claimed within two days, may castrate him; for which service he shall be entitled to recover of the owner of any such horse, mule or jack, three dollars.

SEC. 6380. Such castration shall be done in the usual manner, so that the life of the animal shall be endangered as little as possible.

SEC. 6381. If any such horse, mule or jack be running at large, and can not be taken up, he may be killed, if notice be first put up at the court-house and at three other of the most public places in the county, for ten days, describing the color, marks and brands, as near as practicable, of the animal, and that he will be killed unless taken away and secured. *Rev. Stat., chap. 74.*

CHAPTER CXLII.

SUITS BY THE STATE (a).

SECTION

6382. State not to give security for costs.
6383. not to swear to pleadings.
6384. to sue in her name, where.
6385. actions by, how prosecuted.
6386. when may sue officers.
6387. when may sue for fine or penalty,
6388. audited account due, to be a lien.
6389. set-off against, only allowed when.

SECTION

6390. State, suits by, to have precedence.
6391. proceedings by, to enforce execution.
6392. money collected for, to be paid into treasury.
6393. judgment in favor of, to be certified to auditor; costs, how paid.
6394. appeals by, no bond.

SECTION 6382. The state shall not be required or ruled to give security for costs in any case. *Act Jan. 19, 1855, sec. 7.*

(a) The State of Arkansas shall never be made defendant in any of her courts. *Art. V, sec. 20, Const.*

SEC. 6383. It shall not be requisite for the state, or any officer thereof, to swear to any petition, bill, answer or proceeding in chancery, or to any application, pleading or proceeding at law, and such bills, petitions, answers, applications, pleadings or proceedings shall have the like effect as if the same were duly verified by affidavit, as in the case of private persons. *Ib.*, sec. 9.

SEC. 6384. All actions in favor of and in which the state is interested shall be brought in the name of the state in the circuit court of the county in which the defendant may reside or be found, and shall be prosecuted by the prosecuting attorney for the state prosecuting in such circuit (b).

SEC. 6385. All actions by the state shall be prosecuted, proceeded in and conducted to final judgment in the same manner as actions by individuals. *Rev. Stat.*, chap. 147, secs. 4, 5.

SEC. 6386. Where the debt is due by a sheriff, clerk or collector of the revenue, or any other receiver of public moneys, for money collected or received, and such officer, collector or receiver has failed to pay the same in the manner and at the time prescribed by law, the action for the recovery of such debt may be commenced at any time after such failure.

SEC. 6387. Where officers, corporations or officers of corporations are required to report to the auditor of state the moneys in their hands belonging to the state or due by them, or by a corporation to the state, at a certain period or periods fixed by law, and a fine or penalty is imposed for such failure, the action for the recovery thereof may be commenced at any time after such failure. *Civil Code*, secs. 485, 486.

SEC. 6388. The amount of any account audited, adjusted and found due the state, with the penalties and interest thereon, shall be a lien on all the real estate of the person charged with the same from the time suit shall be brought for the recovery thereof. *Rev. Stat.*, chap. 18, sec. 35.

SEC. 6389. In suits brought in behalf of the state, no debt or claim shall be allowed as a set-off but such as have been exhibited to the auditor and by him allowed, except only in cases when it shall be proven to the satisfaction of the court that the defendant at the time is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claims to the auditor in consequence of sickness or absence. *Ib.*, sec. 13.

SEC. 6390. Precedence shall be given, in all courts, to actions or other proceedings in which the state is a party over any other business of the court. *Civil Code*, sec. 488.

SEC. 6391. Whenever an execution against a public debtor shall not be satisfied in the regular course of the proceeding, and the attorney-general or prosecuting attorney shall be of opinion that the same is caused by fraudulent concealment of the debtor's property, or by any other obstruction thereto, he may cause actions to be brought, either in the court in which the judgment was obtained or in any other circuit court where the property may be or the debtor found, to set aside such fraudulent conveyances, remove any obstructions to the execution, or to obtain satisfaction of the judgment; and for that purpose may employ an attorney to bring such action, or an agent to prepare the suit and attend to the collection of the judgment, and may agree as to a compensation

(b) As to what suits may be brought in name of state, see SEC. 4938, and see further, as to venue of such actions, SEC. 5006. For exceptions to the rule that suits by the state must be brought in the county in which the defendant resides, see SEC. 5410.

to be paid for their services, either certain or contingent on success; but the amount of such contingent compensation shall not exceed twenty per cent. on the first three hundred dollars, and ten per cent. on any excess over said amount; for which compensation, when due, the auditor, upon the certificate of the attorney-general or prosecuting attorney, shall issue a warrant on the treasurer (*). *Civil Code, sec. 489, as amended 1871.*

SEC. 6392. The sheriff or other officer collecting any money due to the state shall pay the same into the public treasury and obtain a quietus therefor, and not to the attorney-general, or any other attorney or agent employed in the collection of the same, or to any other person, unless otherwise directed by law.

SEC. 6393. The court rendering a judgment in favor of the state shall certify the amount thereof, together with the costs, to the auditor, and shall also certify the fees due to officers and to witnesses for attendance on behalf of the state, for which the auditor shall issue his warrant on the treasurer to the person entitled (c). *Civil Code, secs. 490, 491.*

SEC. 6394. All appeals or writs of error taken or prosecuted by the state (d) shall, *ipso facto*, operate as a *supersedeas* and suspension of all further proceedings in the cause in which such appeal may be taken or writ of error sued out, until the final disposition thereof, without bond, recognizance or security, nor in any case where the state shall apply for an injunction shall security be required; but, if entitled thereto in other respects, the same may be granted according to the justice and equity of the case. *Act Jan. 19, 1855, sec. 10.*

(*) See note (c) *post*.

(c) But no warrant can be issued without a previous appropriation. See SEC. 3173. See further, as to payment of costs by state, SECS. 1052, 2346, 2347.

(d) See SEC. 1278.

CHAPTER CXLIII.

SURETIES.

SECTION

SURETY MAY MAINTAIN ACTION AGAINST HIS PRINCIPAL.

6395. May maintain action to compel principal to pay debt.

6396. May maintain such action before debt due.

6397. May obtain provisional remedies.

WHEN AND HOW SURETY MAY COMPEL CREDITOR TO SUE.

6398. May require creditor to sue principal.

6399. Suit not brought, surety exonerated.

6400. Limitation of two preceding sections.

RIGHTS AND REMEDIES OF SURETIES AGAINST PRINCIPAL, AND BETWEEN EACH OTHER.

6401. Surety paying, principal to refund.

SECTION

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6403. Surety may recover from co-surety, when.

6404. Extent of liability of co-surety.

6405. Surety entitled to judgment against principal, when.

6406. Notice; limitation.

SURETIES ON OFFICIAL BONDS, HOW DISCHARGED.

6407, 6408, 6409, 6410. Sureties on official bonds discharged, when and how.

6411. Order for new bond and surety, when made.

6412. New bond, how taken; approval.

6413. How far to operate as discharge.

6414. Remedy of surety against principal and co-sureties.

6415. Actions against executors and administrators.

SURETY MAY MAINTAIN ACTION AGAINST HIS PRINCIPAL.

SECTION 6395. A surety may maintain an action against his principal to compel him to discharge the debt or liability for which the surety is bound, after the same has become due.

SEC. 6396. A surety may maintain an action against his principal to obtain indemnity against the debt or liability for which he is bound; before it is due, whenever any of the grounds exist upon which, by the provisions of chapters VII and IX, an order may be made for arrest and bail, or for attachment (a).

SEC. 6397. In such action, the surety may obtain any of the provisional remedies allowed, and upon the ground and in the manner prescribed by law. *Civil Code, secs. 749-751.*

WHEN AND HOW SURETY MAY COMPEL PAYEE OR HOLDER TO SUE.

SEC. 6398. Any person bound as surety for another in any bond, bill or note, for the payment of money or the delivery of property, may, at any time after action hath accrued thereon, by notice in writing, require the person having such right of action forthwith to commence suit against the principal debtor and other party liable.

SEC. 6399. If such suit be not commenced within thirty days after the service of such notice, and proceeded in with due diligence, in the ordinary course of law, to judgment and execution, such surety shall be exonerated from liability to the person notified (aa).

(a) This provision was not in conflict with the constitution of 1868. *Ruddell v. Childress*, 31-511. An executor who seeks to remove out of the state, without leaving property to indemnify his sureties against loss by reason of his conversion of the assets of the estate, may be arrested and held to bail under this section. *Id.*

(aa) Where a surety has given the holder of a bond notice, under this statute, to sue the principal debtor, and he fails to do so within thirty days, he may plead his exoneration in a court of law (it appearing upon the face of the bond that he is security), in bar of an action on the bond. *State Bank v. Watkins*, 6-123. Or

SEC. 6400. The two preceding sections shall not extend, first, to the bond of any executor, administrator, guardian or other person given to secure the performance of his trust or the duties of his office; nor, second, to any bond with collateral conditions, except bonds with collateral conditions exclusively for the payment of money or the delivery of property, or exclusively for the performance of a covenant or agreement for the payment of money or delivery of property.

RIGHTS AND REMEDIES OF SURETIES AGAINST PRINCIPAL, AND BETWEEN EACH OTHER.

SEC. 6401. When any bond, bill or note for the payment of money or delivery of property shall not be paid by the principal debtor, according to the tenor thereof, and such bond, bill or note, or any part thereof, shall be paid by the surety, the principal debtor shall refund to the surety the amount or value, with interest thereon at the rate of ten per centum per annum from the time of such payment (b).

SEC. 6402. When such payment by a surety shall be made in money, such surety may recover the same, with interest, in an action for so much money paid to the use of the defendant; and, when payment is made in property, he

he may elect to suffer judgment by default, and apply to equity for relief. *Hemptead & Conway v. Watkins, adm. of Byrd, Ib., 317.*

Where the holder of a bond gives day of payment to the principal, on a valuable consideration, without the consent of a security, the latter is thereby discharged, both in law and equity. *Coldwell's exr. v. McVicar, 9—418.*

The failure of the obligee or payee to sue the principal debtor, within the time prescribed by the statute, will not release the security where the notice to sue, given by the security under the statute, is served, not upon the obligee or payee himself, but upon his attorney at law who has the note for collection. *Cummins & Finno v. Garretson, 15—132.* If a receiver in prison for a failure to pay over is discharged with the assent of the party procuring the order for his imprisonment, that does not discharge his sureties. *Hawkins v. Mims, 36—145.* An extension of time will not discharge the surety, unless it be for some definite time. *King v. Haynes, 35—463.* Proof of the surety's notice to the creditor to sue must be clear. *Ib.* An agreement to extend the time of payment must be upon an adequate consideration. Payment of a part of the debt by the principal is not such a consideration, and an agreement to extend the time based thereon will not discharge the surety, even though carried out. Nor will mere delay to issue an execution have that effect. *Thompson v. Robinson, 34—44.* An agreement for forbearance will not discharge the surety, unless the time is fixed. *Ib.* A failure of the creditor to attach, upon notice by the surety to sue, will not discharge the latter, unless grounds for attachment be shown. *Ib.* Sureties will be discharged by a willful loss of collaterals. *Hubbard v. Pace, 34—80.* The marriage of the creditor and principal debtor discharges the sureties. *Govan v. Moore, 30—667.* The discharge of one of the sureties by failure of the creditor to sue after notice does not discharge the others. *Wilson v. Tebbetts, 29—579.* Where the principal debtor mortgages to his sureties property sufficient to indemnify them, they can not require the creditor to bring suit. *Ib.* Where a sheriff, for the benefit of the principal, pays off an execution in his hands against the principal and security, without the consent of the latter, a court of equity will enjoin its enforcement against the surety. *Hill v. Sewell, 27—15.*

(b) A surety on a vendee's notes for the purchase money has a right to enforce the vendor's lien superior to any other claims against the land on account of the vendee. *Beattie v. Dickinson, 39—205.* Where, in an action against principal and sureties, property of the principal is attached, and he gives cross-bond, with sureties, the latter are primarily liable, as between themselves and the original sureties, to the extent of the value of the property. *Fletcher v. Menken, 37—206.* Sureties on guardian's bond who have paid his debts are entitled to subrogation to the ward's remedies against him. *Gilbert v. Neely, 35—24.* Where successive sureties are given at various stages of a litigation, each set exonerates the preceding, and, while all are liable to the creditor, as between themselves they are liable to exoneration in inverse order. *Christman v. Jones, 34—73.* A surety can not be subrogated until he has paid the entire debt. *McConnell v. Beattie, 34—113; see Schoonover v. Allen, 40—132.* A surety need not wait for judgment against him before paying; but by paying before judgment he undertakes the burden of showing that he was actually bound to pay. *Fishback v. Weaver, 34—569.* Sureties who are compelled to pay the debt after the close of the administration on the estate of a co-surety can subject assets descended to the heir to contribution. *Williams v. Ewing, 31—229.* Sureties may plead, in defense of an action on a promissory note, that it was executed upon the sole consideration that the payee was to advance their principal a certain sum of money, which he failed to do, and retained the note as collateral security on other transactions. *Bushey v. Reynolds, 31—657.*

may recover the value, with the interest, in an action for so much property sold to the defendant (bb).

SEC. 6403. When there are two or more sureties in such bond, bill or note, and any of them shall pay, in money or property, more than his due proportion of the original demand, such surety may recover such excess in the same form of action as herein provided for a surety against the principal debtor (c).

SEC. 6404. No such surety shall be compelled, in any such action as specified in the preceding section, to pay more than his due proportion of the original demand; and, when such surety shall have previously paid any part thereof, he shall be liable in such action to pay only so much as the amount already paid by him falls short of his due proportion of the original demand.

SEC. 6405. In all cases where judgment is given in any circuit court upon any bond, bill or note, for the payment of money or the delivery of property, against the principal debtor and sureties therein, and such surety shall pay the judgment, or any part thereof, he shall be entitled, upon motion, to judgment in the same court against the principal debtor for the amount he is entitled to recover, together with costs.

SEC. 6406. No judgment shall be rendered, as provided in the preceding section, unless the party applying therefor shall have given the adverse party at least ten days' notice in writing of such motion, nor unless such motion shall be made within one year from the rendition of the original judgment (*).

SURETIES ON OFFICIAL BONDS, HOW DISCHARGED.

SEC. 6407. Any person bound as a surety in any bond given by an officer for the faithful performance of the duties of his office may, on his petition in writing adduced to the court authorized by law to take and approve such official bond, be discharged from all future liability on such official bond (cc).

SEC. 6408. Such petition shall set forth the facts upon which the application for a discharge is founded, and shall be verified by the affidavit of the petitioner.

SEC. 6409. A notice in writing of such intended application, together with a copy of the petition, shall be personally served on the principal in such bond at least twenty days before the making of such application (d).

SEC. 6410. If the principal in the bond shall have been absent from the state for the period of six months, the publication of such notice and petition in some newspaper printed in this state, for three successive weeks, shall be a sufficient service of such notice.

SEC. 6411. The court to whom the petition is addressed shall hear the application, and may, on examination thereof, in their discretion, make an

(bb) Where a surety pays a debt on default of his principal, there is such an implied assent, on the part of the principal, as will entitle the surety to maintain an action against him for money paid. *Snider v. Great-house et al.*, 16—72. See also *Bone, adm., v. Torry, Ib.*, 83; *Chipman v. Fambro, Ib.*, 291.

(c) The giving of a mortgage by one surety to secure the debt does not render him liable for the whole amount as between himself and his co sureties, and if one of them pays the debt, he can only recover contribution from the mortgaging surety. *Chollar v. Temple*, 39—238.

(d) See SECS. 3357-3362.

(cc) This statute does not apply to sureties on the bond of an administrator. *Va'court v. Sessions*, 30—515.

(d) As to petition by sureties of guardian, to require him to give a new bond, see *Dempsey v. Fenno*, 16—491.

order requiring the principal in such bond to give new bond and surety for the performance of his official duties (e).

SEC. 6412. If such bond and surety is given, it shall be taken, approved, filed and recorded in the same manner that the official bond of such officer is required by law to be taken, approved and recorded.

SEC. 6413. When such new bond is taken, approved and filed, it shall immediately operate as a discharge of all the sureties in the former bond from all liability arising from any subsequent misconduct or default of the principal therein; and such sureties shall thenceforth be liable on such bond only for such breaches thereof as shall have happened prior to the taking, approving and filing of the new bond.

SEC. 6414. Any person bound as a surety in any bond given by an officer to secure the faithful performance of his duties, who shall pay any money he shall have been liable to pay by reason of such bond, shall have the same right and remedy against the principal and co-sureties as are provided in this act against principal and surety in bonds, bills or notes for the payment of money or the delivery of property.

SEC. 6415. Actions for the remedies given by this act may be maintained by and against executors and administrators in all cases where they could be maintained by or against their testators or intestates. *Rev. Stat., chap. 137.*

CHAPTER CXLIV.

TAVERNS.

SECTION	SECTION
6416. Keepers of public taverns required to procure license from county court.	6417. Who not required to procure such license.
	6418. Mode of procuring license, tax, etc.

SECTION 6416. The county courts are authorized to grant tavern licenses within their respective counties, to continue in force for one year, and to renew the same from time to time, as may be required. All persons keeping a public tavern, whether they retail spirituous or vinous liquors or not, shall first procure a license for that purpose from the county court of the county (a). *Rev. Stat., chap. 148, secs. 1, 3.*

SEC. 6417. Persons who live on any road in the county may keep a house of private entertainment, and furnish diet and lodging to travelers and others, and provender and pasturage for horses and the like, without obtaining any tavern license, so that such person shall not sell, barter, or suffer to be sold or bartered, any vinous or ardent spirits on his account. *Ib., sec. 4.*

(e) The county court can discharge the sureties on the bond of the county treasurer and require a new bond; but it can not discharge such sureties from liabilities already incurred. *Talbot, ex parte*, 32—424. A non-resident can not be taken as surety on an official bond, nor can a married woman. *Hyner v. Dickinson*, 32—776.

(a) For penalty for keeping tavern without procuring license, see SEC. 1859.

For form of indictment, see *State v. Adams*, 16—497.

SEC. 6418. Any person wishing to keep a tavern shall apply to the county court by petition, setting forth the place where he wishes to keep tavern, and the extent of his means of accommodation of persons, and the extent of stables for horses and the like; and, if the court be satisfied that the public convenience will be promoted by such tavern being kept, and that the means of accommodation are sufficient for the purpose proposed, it may grant such applicant a license to keep the tavern prayed for. The court, on examination of any petition for the privilege of keeping a tavern, if satisfied that such license should be granted, shall assess the amount of tax to be paid yearly for such privilege, which shall not be less than ten dollars, nor more than one hundred dollars. When such tax shall be so assessed, the applicant shall pay the amount to the county treasurer of his county, and, on producing the treasurer's receipt, such license shall be granted in such form as shall be prescribed by the court. *Ib.*, *secs.* 5, 6, 7.

CHAPTER CXLV.

TELEGRAPH COMPANIES.

SECTION

6419. Owners of telegraphic lines to receive dispatches; penalty for neglect or refusal.

6420. Dispatches to be transmitted, how.

SECTION

6421. Communications of state officers to receive immediate dispatch, when.

6422. Roads, streets and waters, power of companies to set up fixtures along and across.

SECTION 6419. It shall be the duty of the owner or association owning any telegraph lines, doing business within this state, to receive dispatches from and for other telegraph lines and associations, and from and for any individual, and, on payment of their usual charges for individuals for transmitting dispatches, as established by the rules and regulations of such telegraph line, to transmit the same with impartiality and good faith, under the penalty of one hundred dollars for every neglect or refusal so to do, to be recovered, with costs of suit, in the name and for the benefit of the person sending, or desiring to send, such dispatch (*). *Provided*, that nothing contained in this section shall be construed to require any telegraph company or association to receive and transmit dispatches from or for any other company or association owning a line of telegraph parallel with or doing business in competition with the line on which the dispatch is required to be sent.

SEC. 6420. It shall likewise be the duty of every owner or association to transmit all dispatches in the order in which they are received, under the like penalty of one hundred dollars, to be recovered, with costs of suit, by the person whose dispatch is postponed out of its order. *Provided, however*, that arrange-

(*) In a suit under this statute no actual damage need be alleged or proved. *Little Rock & Ft. Smith Telegraph Co. v. Davis*, 41—79. Telegraph companies are bound to ordinary care and diligence. *Ib.* When it is proved that a message was received and not delivered, and there is no proof to excuse the negligence, it may be assumed to have been intentional on the part of the agent, or a gross disregard of duty. *Ib.*

ments may be made with the proprietors or publishers of newspapers for the transmission, for the purpose of publication, of intelligence of general and public interest out of its regular order (a). *Act July 16, 1868.*

SEC. 6421. The telegraph companies now, or which may hereafter be, in existence in this state shall, on application of any of the officers of this state, in the event of war, insurrection, or any resistance of public authority, or in case of the commission of any crime, and the person charged therewith or suspected thereof shall attempt to escape, give to the communications of such officers immediate dispatch, and for the transmission of the same the company shall charge the same price as for other communications.

SEC. 6422. Any telegraph company shall have power to set up their fixtures along and across any of the roads, streets or waters of this state. *Provided*, they do not obstruct the same. *Act Jan. 21, 1861, secs. 2 and 5.*

CHAPTER CXLVI.

TOBACCO, INSPECTION OF.

SECTION

- 6423. Inspection of tobacco, how and by whom established.
- 6424. Amount paid on each hogshhead.
- 6425. Inspectors, how, by whom, and for what length of time appointed.
- 6426. Bond to be given by them, in what amount, and to whom.
- 6427. First and second inspectors, duty of.
- 6428. The marks and owners' names to be entered in a book.
- 6429. Picker appointed.
- 6430. The oath of the picker.
- 6431. Compensation of picker.

SECTION

- 6432. Duty of third inspector.
- 6433. Dimensions of casks or hogshheads.
- 6434. Picker's bond, to whom given and in what amount.
- 6435. What weight of hogshheads to be considered transfer.
- 6436. This act not to prevent exportation without inspection.
- 6437. Label to be attached to the sample of each hogshhead.
- 6438. What kind of tobacco to pass inspection.
- 6439. How many qualities are allowed to pass.

SECTION 6423. It shall be lawful for the county courts in this state to establish as many inspectors of tobacco in their respective counties as they may deem necessary. Any person wishing to have an inspection of tobacco established on his land shall enter into bond and security to the judge of the county court of his county to have a good and sufficient warehouse for the safe keeping of tobacco, and a set of weights and scales suitable for weighing all such tobacco as may be deposited in his warehouse, and a good and sufficient prize for the purpose of prizing in the head of such hogshheads, after the same may be inspected, in nine months after such application.

SEC. 6424. All such owners of warehouses shall be entitled to receive the sum of seventy-five cents for each hogshhead of tobacco that may be weighed at such scales. *Provided*, that the owner of said tobacco may have the liberty of storing said tobacco the term of one month without paying any additional

(a) For penalty for divulging contents of dispatches, see SEC. 1826.

fee, and twenty-five cents per month for each month thereafter, to be paid by the person taking away the same.

SEC. 6425. It shall be the duty of the county courts of said counties wherein there is any inspection of tobacco established, and the owner thereof shall have complied with the requisitions of this act, to appoint three inspectors for each inspection, to be designated by first, second and third inspectors, who shall hold their appointments during the term of one year, and no longer, except they are re-appointed.

SEC. 6426. Said inspectors, so appointed, shall enter into bond, with sufficient security, to the judge of said county court, in the sum of two thousand dollars each, conditioned for the faithful discharge of their duty, and shall take the following oath: "You swear that you will diligently and carefully examine and view all tobacco brought to this place of inspection when you are appointed inspector, and that not separate and apart from your fellow, but in his presence, and that you will not receive or pass any tobacco that is not, in your judgment, sound, well-conditioned, merchantable and clear of trash; nor receive, pass or stamp any tobacco hogsheads or casks of tobacco contrary to the true intent and meaning of this act; nor refuse any tobacco that is, in your judgment, sound, well-conditioned, merchantable and clear of trash, but that you will in all things faithfully discharge your duty as inspector of tobacco according to the best of your skill and judgment, and according to the directions of this act, without favor, fear, affection or partiality. So help you, God."

SEC. 6427. It shall be the duty of the first and second inspectors to attend, whenever called on, and inspect all such tobacco as may be deposited at the warehouse for inspection to which they are appointed inspectors; and, after inspecting the same, shall have each hogshead well coopered up, weighed, marked and stored away, and shall give to the owner thereof a printed note or manifest containing the gross, tare and net weight, specifying the quality, which shall be first, second or third quality, dark or brown, as the case may be, together with the name of the warehouse, for which the said inspectors shall be entitled to receive the sum of one dollar, to be paid by the person applying to said inspectors for such services.

SEC. 6428. That all persons having tobacco at public warehouses may have equal justice, the inspectors shall enter in a book kept for that purpose the marks and owners' names of all tobacco brought to their respective warehouses for inspection, as the same shall be brought in, and shall view and inspect the same in due time, as it shall be entered in said book, without favor or partiality; and no inspector shall, by himself, his servant, or any other person, either directly or indirectly, be concerned in picking any refused tobacco, unless it be his own property, on any pretense whatsoever, on the penalty of being forever thereafter disabled from the office of inspector.

SEC. 6429. The inspectors shall appoint some suitable person to pick all such tobacco as they may refuse, whose duty it shall be to pick all such tobacco as the before-mentioned inspectors may refuse. *Provided*, the owner shall not make choice to pick the same, or dispose of it in any way that he may make choice of, as refused tobacco.

SEC. 6430. The same picker, before he enters on the duties of his appointment, shall take the following oath: "I, A B, do solemnly swear that I will,

without favor or partiality, pick all such tobacco as may be assigned to me to pick; that I will carefully reserve all such as I, in my judgment, believe to be sound and of good quality, clear of trash, and such as ought to pass."

SEC. 6431. It shall be the duty of said inspectors to examine all such tobacco as may be reserved by such picker, and, if they should be of opinion that the same ought to pass, they are hereby required to give to the owner thereof a transfer note, and said picker, for his trouble for picking and reprizing, shall be entitled to receive one-tenth part of all such transfer tobacco.

SEC. 6432. It shall be the duty of the third inspector to attend, when called on by one or both of the other inspectors, and at no other time, which shall be in case of the absence or inability of one of the others, or in case they differ in judgment; and, when he shall be so called, shall be entitled to his portion of the fees of all such tobacco as he may inspect.

SEC. 6433. No casks or hogsheads for tobacco shall exceed fifty-two inches in length of the staves, nor thirty-six inches in the diameter of the head, with reasonable allowance for prizing, which shall not exceed two inches at the prizing head.

SEC. 6434. Such picker of tobacco, appointed as by this act directed, shall enter into bond and approved security to the judge of the county court, in the sum of two thousand dollars, conditioned for the faithful performance of the duties enjoined on him by this act, which bond, together with the inspectors' bond, shall be filed in the clerk's office.

SEC. 6435. Any hogshead of tobacco weighing under nine hundred net shall be deemed transfer and subject to be reprized, and the inspectors are hereby required to issue a transfer note or manifest.

SEC. 6436. Nothing herein contained shall be so construed as to prevent any person from sending any tobacco out of this state without inspecting, if they make choice so to do.

SEC. 6437. It shall be the duty of each inspector to take from each hogshead of tobacco a fair sample of the tobacco of each class, and attach thereto a label certifying to what hogshead the same belongs.

SEC. 6438. No inspector of tobacco within this state shall suffer any tobacco to pass his inspection but such as is sound, well cured, free from trash and suitable for exportation.

SEC. 6439. It shall and may be lawful for inspectors of tobacco appointed under this act to pass tobacco by them inspected, in first and second quality, or to pass it as crossed, which shall be considered as of the third quality, according to the quantity of the tobacco by them inspected. *Act Jan. 11, 1843.*

CHAPTER CXLVII.

TOWNSHIPS.

SECTION

6440. County court shall divide county into townships.

6441. Description of each township, place of holding elections, alteration, etc., to be noted of record.

6442. Record showing establishment of new township to be transmitted to secretary of state.

SECTION

6443. Such description to be furnished in all cases.

6444. No township line to pass through any town.

6445. Election for officers of new townships, when to be ordered by county court; when governor to appoint officers.

6446. Term of such officers.

DIVISION OF COUNTY INTO TOWNSHIPS.

SECTION 6440. The county court of each county shall, from time to time, as occasion may require, divide the county into convenient townships, sub-divide those already established, and alter township lines.

SEC. 6441. It shall be the duty of the county clerk to enter on the minutes of the court a description of each township, as established, containing the name and boundaries of such township, and the place appointed for holding elections; and he shall also note in his minutes every alteration that may, from time to time, be made in any township line.

SEC. 6442. Such clerk shall, within thirty days after the establishing of any new township, or altering any township line, transmit to the secretary of state a certified copy of the record made in such case.

SEC. 6443. If any county has not heretofore furnished the secretary of state with a description of the several townships in such county, it shall be the duty of the county court to direct the clerk forthwith to furnish such description.

SEC. 6444. No township line shall pass through any town, but the whole of each town shall be included in one township. *Rev. Stat., chap. 152.*

OFFICERS FOR NEW TOWNSHIPS, ETC.

SEC. 6445. Whenever the county court of any county shall order the formation of one or more new townships, and such townships shall have been formed, or shall change the boundary lines of any of the townships in said county, which formation or change shall necessitate more or additional township officers, if such necessity shall arise more than six months before any general election, the county court shall order an election for said officers to take place within twenty days from the date of such formation or change of boundary lines, said election to be conducted in conformity with the law providing for special elections. *Provided*, the governor shall appoint such township officers if the formation or change of boundary lines shall be made less than six months before the next general election (*).

SEC. 6446. The officers elected or appointed in pursuance of this act shall

(*) See SECS. 601, 2716; art. VII, sec. 50, *Const.*

hold their offices until the next general election, and until their successors are elected and qualified. *Act Feb. 12, 1875.*

CHAPTER CXLVIII.

TRADE MARKS.

SECTION

6447. Protection in use of, how secured.
6448. Declaration under oath of party claiming.
6449. Secretary of state not to record name unaccompanied by marks distinguishable from others.
6450. Copies of trade mark, etc., under seal of secretary of state, may be used as evidence.
6451. Trade marks to remain in force twenty-five years; exception.

SECTION

6452. Penalty for violating trade mark.
6453. No action allowed to protect trade mark used in unlawful business or obtained by fraud, etc.
6454. Persons obtaining trade mark by fraud liable for damages.
6455. Construction of act.

SECTION 6447. Any person or firm in this state, or any of the United States or territories thereof, and any corporation created by the authority of this state, or the United States, or any of the states or territories thereof, and any person, firm or corporation resident, or located, in any foreign country, which, by treaty or convention, affords similar privileges to citizens of the United States, and who may be entitled to the exclusive use of any lawful trade mark or device, or who may intend to adopt and use any trade mark or device for exclusive use in this state, may obtain protection for such lawful trade mark or device by complying with the following requisites and requirements :

First. By making out and filing in the office of the secretary of state of this state, to be there registered or recorded, a statement specifying the names of the parties and their residence and place of business who desire the protection of the trade mark, the class of merchandise, and particular description of goods comprised in such class, by which or to which the trade mark has been or is intended to be appropriated; a description of the trade mark itself or device, or combination of words, letters or figures or characters used or intended to be used as such, and the mode in which it has been or is intended to be applied and used, and the length of time, if any, during which the trade mark has been in use.

Second. By making payment to the secretary of state, for the use of the state, of a fee of not less than twenty-five nor more than one hundred dollars, to be determined by the secretary according to a schedule of fees arranged with reference to the number of words, figures, characters, etc., contained in such statement, which schedule it is hereby made the duty of the secretary to make and keep posted up in his office.

SEC. 6448. The certificate prescribed in the preceding section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration, verified by the person or by some member of the firm or officer of the corporation by whom it is filed, to the effect that the party claiming the protection for the trade mark has a right to the use of the

same, and that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive, and that the *fac similes* presented for record are true copies of the trade mark sought to be protected.

SEC. 6449. The secretary shall not receive and record any proposed trade mark which is not and can not become a lawful trade mark, or which is merely the name of a person, firm or corporation, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade mark appropriated to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade mark as to be likely to deceive the public. But this section shall not prevent the registry of any lawful trade mark rightfully in use on the first day of May, 1883.

SEC. 6450. The time of the receipt of any trade mark at the office of the secretary of state, for registration or record, shall be noted and recorded. Copies of the trade mark, and of the date of receipt thereof, and of the statement filed therewith, under the seal of the secretary of state, shall be furnished by the secretary to any person who may apply therefor, and pay the fee therefor fixed by the secretary, not exceeding the fee required for the original registration thereof, and such copies shall be evidence in any suit or proceeding in which such trade mark shall be brought in controversy.

SEC. 6451. A trade mark registered as above prescribed shall remain in force for twenty-five years from the date of such registration, except in case where such trade mark is claimed for, and applied to, articles not manufactured in this state, and in which it receives protection under the laws of some other state, territory or foreign country for a shorter period, in which case it shall cease to have any force in this state, by virtue of this act, at the same time that it becomes of no effect elsewhere.

SEC. 6452. Such trade mark, during the period it remains in force, shall entitle the person, firm or corporation registering the same to the exclusive use thereof, so far as regards the description of goods to which it is appropriated in the statement filed under oath, as aforesaid, and no other party shall lawfully use the same trade mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, on substantially the same description of goods, or obtain, use or employ any article or thing whatever upon which such trade mark, or substantially the same, or one so nearly resembling it as to be calculated to deceive, has been printed, painted, stamped, woven, branded, or in any manner put or placed, for the purpose of putting up, shipping, selling or otherwise disposing of substantially the same description of goods as those to which the same has been appropriated by the party rightfully entitled to the use of such trade mark; and any person or member of any firm, or agent, or officer of any corporation, not entitled so to do, who shall knowingly use such trade mark, or obtain, use or employ, as aforesaid, any such article or thing, or shall reproduce, counterfeit, copy or imitate any recorded trade mark, and affix the same to, or, for the purpose of having the same used or disposed of, to affix to goods of substantially the same descriptive properties and qualities as those referred to in the registration, or who shall, with intent to defraud, deal in or sell, or keep, or offer for sale, or cause or procure the sale of, any goods of substantially the same descriptive properties as those referred to in the registration

of any trade mark registered in pursuance of this act, to which, or to the package in which the same are put up, is fraudulently affixed said trade mark, or any colorable imitation thereof, calculated to deceive the public, knowing the same to be counterfeit, or not the genuine article, or goods referred to in said registration, shall be deemed guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both such fine and imprisonment, and such person, and also the firm of which he is a member, or the corporation of which he is an agent or officer, and which may have countenanced or connived at his act, shall moreover be liable to an action for damages for such wrongful act, at the suit of the owner of such trade mark, and the party aggrieved shall also have his remedy according to the course of equity, to enjoin the wrongful use of his trade mark, and to recover compensation therefor in any court of competent jurisdiction, and in any such action or suit such owner or aggrieved party shall be entitled to recover a reasonable amount for attorney's fees, to be paid by the party or parties held liable therein.

SEC. 6453. No action shall be maintained under the provisions of this act by any person claiming the exclusive right to any trade mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.

SEC. 6454. Any person who shall procure the registry of any trade mark, or of himself as the owner of a trade mark, by making false or fraudulent representations or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the person injured thereby.

SEC. 6455. Nothing in this act shall prevent, lessen, impeach or avoid any remedy at law, or in equity, which any party aggrieved by any wrongful use of any trade mark might have, if the provisions of this act had not been enacted, and nothing in this act contained shall be construed by any court as abridging, or in any manner affecting unfavorably, the claim of any person to any trade mark after the expiration of the term for which such trade mark was registered. *Act March 31, 1883.*

CHAPTER CXLIX.

TRAPPERS AND HUNTERS.

SECTION

6456. Non-resident trappers, hunters and seiners taxed.

SECTION

6457. License to trap, hunt, etc., how obtained.
6458. Penalty for trapping, etc., without license.

SECTION 6456. A tax of ten dollars is hereby levied upon all non-resident trappers, hunters, seiners or netters of fish who may follow trapping, hunting, seining or netting of fish in this state.

SEC. 6457. Before any non-resident may be permitted to follow trapping, hunting, seining or netting of fish in this state, he shall procure a license from the county clerk, countersigned by the collector of the county in which he proposes to trap, hunt, seine or net fish. *Secs. 1 and 2, act March 6, 1875, as amended by act Dec. 15, 1875.*

SEC. 6458. Any non-resident who fails to comply with the preceding section of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of twenty-five dollars. *Act March 6, 1875.*

CHAPTER CL.

TRESPASSES, INJURIES FROM FIRE, ETC.

SECTION

6459, 6460. Trespases for which double and treble damages are recoverable.

6461. Single damages only to be recovered, when.

SECTION

6462. When party injured by fire, etc., may recover damages.

6463. Liability of owners of gins.

SECTION 6459. If any person shall cut down, injure, destroy or carry away any tree placed or growing for use or shade, or any timber, rails or wood, standing, being or growing on the land of another person, or shall dig up, quarry or carry away any stone, ground, clay, turf, mold, fruit or plants, or shall cut down or carry away any grass, grain, corn, cotton, tobacco, hemp or flax, in which he has no interest or right, standing or being on any land not his own, or shall willfully break the glass, or any part of it, in any building not his own, every person so trespassing shall pay the party injured treble the value of the thing so damaged, broken, destroyed or carried away, with costs.

SEC. 6460. If any person shall voluntarily throw down or open any doors, bars, gates or fence, and leave the same down or open, other than those that lead into his own inclosure, he shall pay the party injured the sum of five dollars for each offense, and double the amount of damages the parties may sustain by reason of such doors, bars, gates or fence being thrown open or down, with costs.

SEC. 6461. If, on the trial of any action brought under the provisions of this act, it shall appear that the defendant had probable cause to believe that the land on which the trespass is alleged to have been committed, or that the thing so taken, carried away, injured or destroyed was his own, the plaintiff in the action shall recover single damages only, with costs. *Rev. Stat., chap. 153.*

SEC. 6462. If any person shall set on fire any grass or other combustible material within his inclosures, so as to damage any other person, such person shall make satisfaction in single damages to the party injured, to be recovered by civil action in any court having jurisdiction of the amount sued for; but if any such person shall, before setting out fire, notify those persons whose farms are adjoining said place which he proposes to burn that he is going to fire such grass or other combustible matter, and shall use all due caution to prevent such

fire from getting out, to the injury of any other person, he shall not be liable to pay damages as provided in this section. *Act Feb. 3, 1875, sec. 5.*

SEC. 6463. All owners of cotton gins who shall have the same open or uninclosed, so that hogs shall have free access so as to endanger their lives, shall be liable for all damages thus sustained, which damages shall be determined by a jury or by arbitration. *Act March 6, 1875.*

CHAPTER CLI.

USURPATION OF OFFICE, ETC.

SECTION

6464. In what case action at law may be brought in lieu of *quo warranto*.

6465. How brought to vacate charter.

6466. In case of usurpation of office, how brought.

6467. Prosecuting attorney to institute action, when.

6468. Attorney-general, when.

SECTION

6469. When a person holding office to be deemed a usurper.

6470. Judgment.

6471. How fees recovered.

6472. Pleadings, when to be verified.

SECTION 6464. In lieu of the writs of *scire facias* and *quo warranto*, or of an information in the nature of a *quo warranto*, actions by proceedings at law may be brought to vacate or repeal charters, and prevent the usurpation of an office or franchise.

SEC. 6465. The action to repeal or vacate a charter shall be in the name of the state, and brought and prosecuted by the attorney-general, or, under his sanction and direction, by an attorney for the state.

SEC. 6466. Whenever a person usurps an office or franchise to which he is not entitled by law, an action by proceedings at law may be instituted against him, either by the state or the party entitled to the office or franchise, to prevent the usurper from exercising the office or franchise (a).

SEC. 6467. It shall be the duty of the several prosecuting attorneys to institute the actions mentioned in this chapter against all persons who have or shall usurp county offices or franchises, where there is no other person entitled thereto, or the person entitled fails to institute the same for three months after the usurpation.

SEC. 6468. For usurpation of other than county offices or franchises, the action by the state shall be instituted and prosecuted by the attorney-general.

SEC. 6469. A person who continues to exercise an office after having committed an act, or omitted to do an act, the commission or omission of which, by law, created a forfeiture of his office, shall be subject to be proceeded against for a usurpation thereof.

SEC. 6470. Where a person is adjudged to have usurped an office or franchise, he shall be deprived thereof by the judgment of the court, and the person adjudged entitled thereto reinstated therein; but no one shall be

(a) See *Lambert v. Gallagher*, 28—451; *Ramsey v. Carhart*, 27—12; *Falconer v. Shores*, 37—386; *Elsey v. Falconer*, 42—117.

adjudged entitled thereto unless the action is instituted by him. And the court shall have power to enforce its judgment by causing the books and papers, and all other things pertaining to the office or franchise, to be surrendered by the usurper, and by preventing him from further exercising or using the same, and may enforce its orders by fine and imprisonment until obeyed.

SEC. 6471. Where the usurper has received fees and emoluments arising from the office or franchise, he shall be liable therefor to the person entitled thereto, who may claim the same in the action brought to deprive him of the office or franchise, or in a separate action. If no one be entitled to the office or franchise, the same may be recovered by the state and paid into the public treasury.

SEC. 6472. The pleadings in the actions named in this chapter are not required to be verified by affidavit, unless prosecuted by a private individual. *Civil Code, secs. 522-531.*

CHAPTER CLII.

VACANCIES IN OFFICE (*).

SECTION

6473, 6474. When governor to fill by appointment.

6475. On filing indictment against county and township officers, court to order their suspension.

6476. Judgment and proceedings on conviction.

SECTION

6477. Suspension when officer is imprisoned on criminal charge.

6478. Officer suspended on indictment; governor may fill vacancy temporarily; when court may fill vacancy.

SECTION 6473. When any office, from any cause, may become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have the power to fill the same by granting a commission, which shall expire when the person elected to fill said office, at the next general election, shall be duly qualified. *Art. VI, sec. 23, Const.*

SEC. 6474. In any case wherein a vacancy in any office shall occur, to be filled, under the provision of the constitution, by a special election, the governor shall have the power temporarily to fill the same by granting a commission, which shall expire when the person elected to fill said office, at such special election, shall be duly qualified. *Act Feb. 27, 1877.*

SEC. 6475. Whenever any presentment or indictment shall be filed in any circuit court of this state against any county or township officer, for incompetency, corruption, gross immorality, criminal conduct amounting to a felony, malfeasance, misfeasance or nonfeasance in office (†), such circuit court shall immediately order that such officer be suspended from his office until such presentment or indictment shall be tried. *Provided*, such suspension shall not extend beyond the next term after the same shall be filed in such circuit court, unless the cause is continued on the application of the defendant.

(*) See SECS. 2714-2717, 5720-5725; art. VI, sec. 22, and art. VII, sec. 50, *Const.*

(†) See art. VII, sec. 27, *Const.*

SEC. 6476. Upon conviction of any such officer for any such offenses, a part of the sentence of the circuit court having jurisdiction shall be to remove such officer from office, and the clerk of the court, at the close of the term, shall transmit to the governor a certified transcript of the presentment or indictment, with the judgment of the court thereon, and the vacancy shall be filled as may be prescribed by law at the time the same occurs.

SEC. 6477. Whenever any such officer shall be confined in jail on any such charge as aforesaid, or for any crime, he shall be suspended from office by the circuit court, upon information of such imprisonment being filed, until said officer is discharged from prison by due process of law, on bail or otherwise. *Provided*, that if such imprisonment shall be occasioned by any of the offenses set forth in section 6475, such suspension shall continue and cease as therein directed.

SEC. 6478. Whenever any officer shall be suspended from office on account of any presentment or indictment pending against him, the governor may temporarily appoint an officer in his place, who shall hold until the disability of the officer so suspended is removed, or an election to fill the vacancy occurs, in case there is a judgment of removal. *Provided*, that should a vacancy occur in the office of sheriff or clerk during the session of any court of record, the court may appoint some competent person to perform temporarily the duties of such office until the governor shall make an appointment, as required by this act or existing laws. *Act March 9, 1877.*

CHAPTER CLIII.

VENUE, CHANGE OF.

SECTION

6479. Order for, how obtained.

6480. Notice of motion, when to be given; petition may apply to one additional county.

6481. Venue to be changed to most convenient county.

SECTION

6482. Proceedings when order is obtained out of term time; fees of clerk.

6483. Order to be void if fees not paid or arranged; judge may extend time of payment.

6484. When case to stand for trial in court to which change is made.

SECTION 6479. Any party to a civil action, trial by a jury, may obtain an order for a change of venue therein by motion upon a petition stating that he verily believes that he can not obtain a fair and impartial trial in said action in the county in which the same is pending, on account of the undue influence of his adversary, or of the undue prejudice against the petitioner or his cause of action or defense, in such county. The petition shall be signed by the party and verified as pleadings are required to be verified, and shall be supported by the affidavits of at least two credible persons to the effect that affiants believe the statements of the petition are true.

SEC. 6480. The motion shall be made before, and the order granted by, the judge of the circuit court of the county in which the action is pending, in open court or in vacation, but if made at any time or place except in open

court, at the calling of the case, it shall be upon reasonable notice in writing to the adverse party or his attorney. The party may make his petition and the affidavit supporting the same apply to one county in addition to the one in which the action is pending.

SEC. 6481. Upon presenting the petition and notice to such judge, he shall make an order for the change of the venue in such action to a county to which there is no valid objection, which, in his judgment, is most convenient to the parties and their witnesses.

SEC. 6482. When said order is obtained out of term time, the party obtaining the same shall cause the petition, notice, affidavit and order to be delivered to the clerk of the court in which the action is pending, who shall file the same with the papers in the case; and, in all cases where an order for a change of venue is granted, the clerk shall make and file with the papers a certified copy of all the orders in the case, and, upon the payment of the transmission fees hereinafter provided, shall transmit the papers in the case to the clerk of the court to which the venue is changed, by any safe and convenient mode which he may select, he being responsible for the same, for which he shall receive ten cents per mile to and from said clerk's office, to be paid by the party obtaining the order, and to be taxed in the costs.

SEC. 6483. If the above mentioned fee is not paid or arranged with the clerk within fifteen days from the granting of said order, the order shall be null and void (*). *Provided*, that the judge granting the order may extend the time of making such payment, which shall be stated in the order. *Provided, further*, that the adverse party, if he chooses, may make such payment. But one order for a change of venue shall be granted to the same party in the same action.

SEC. 6484. In all cases of change of venue, the action shall stand for trial in the court to which the change is made, at the first term of the court which commences more than ten days from the filing of the papers of the case in the office of the clerk of such court. *Act Jan. 23, 1875.*

CHAPTER CLIV.

WEIGHTS AND MEASURES.

SECTION

6485. Set of, prepared by the United States, standard for this state.

6486. Secretary of state to seal.

6487. Notice to be given by county court clerks; penalty for use of wrong weights or measures.

SECTION

6488. County court clerks to seal conformably to county standard.

6489. Constable to be inspector; duties of.

SECTION 6485. The set of weights and measures prepared by the United States under the act of congress approved the fourteenth day of June, A. D. 1836, and delivered to the governor of the State of Arkansas, and now deposited in the office of the secretary of state, shall be and the same is hereby declared

(*) See *Haglin & Pope v. Rogers*, circuit judge, 37—491.

to be the standard of all weights and measures used in this state, and the clerk of the county court of each county in this state shall procure, as soon as practicable, at the expense of the county, a complete set of weights and measures, which shall conform to said standard, and shall be sealed by the secretary of state.

SEC. 6486. The secretary of state shall procure a seal or stamp, with the letters "S. A." upon it, with which he shall seal all weights and measures which he shall compare with the said standard in his office and find to be correct; and such weights and measures, after being so sealed, shall be a lawful standard for the county by which they were procured; and the secretary of state shall be allowed to charge the sum of four dollars for his fee for testing and sealing such weights and measures. *Act Feb. 17, 1859.*

SEC. 6487. As soon as the clerk shall have procured such weights and measures for his county, it shall be his duty to cause notice thereof to be given, by written advertisements put up at the court-house door for the space of two months; and if, after the expiration of the said two months, any person shall knowingly keep any measures or weights, and buy and sell any commodity whatsoever by such weights and measures, as do not correspond with the weights and measures deposited in the clerk's office, such person shall, for every such offense, forfeit and pay the sum of ten dollars, for the use of the county.

SEC. 6488. The several clerks of the county courts shall seal all weights and measures that may be presented to them for that purpose which correspond with the county standard.

SEC. 6489. It shall be the duty of every constable, in his township, to inspect, from time to time, the weights and measures used by millers, merchants, peddlers, grocers and other dealers in buying and selling commodities by weight or measure, and report to some justice of the peace all violations of this act which may come to his knowledge. *Rev. Stat., chap. 156.*

CHAPTER CLV.

WILLS AND TESTAMENTS (*).

SECTION

WHO COMPETENT TO MAKE.

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NUNCUPATIVE WILLS.

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 6505. Mariners and soldiers may dispose of their wages as at common law.
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PROVING WILLS AND CONTESTING THEIR PROBATE.

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6530. Testator may deposit will with county clerk; duty of clerk.

WILLS MADE AND PROVED OUT OF THIS STATE PASS PROPERTY IN THIS STATE, WHEN, HOW.

- 6531, 6532, 6533. Wills made in other states according to laws thereof pass property in this state; recording, contesting, etc.

WILLS DEVISING REAL ESTATE, WHERE TO BE RECORDED.

6534. A copy of will devising real estate must be recorded in every county in which any of the real estate is situate.

(*) As to construction of wills, see *McKenzie v. Roleson*, 28—102; *Cox v. Britt*, 22—567; *Robinson v. Bishop*, 21—378; *Cockrill v. Armstrong*, 31—580; *Clark v. Stanfield*, 38—347; *Davis v. Whittaker*, *Id.*, 435; *Fitzhugh v. Hubbard*, 41—64. There can be no such thing as a joint will, to take effect upon the death of the survivor, *Hershey v. Clark*, 35—17.

SECTION

SUBSCRIBING WITNESS, COMPETENCY OF.

- 6535, 6536, 6537. Devise to subscribing witness, effect of.
6538. When creditor may be witness in proof of will.
6539. Attesting witness may relinquish rights, and testify.
6540. Legatee dying in the life-time of testator, to be deemed a legal witness to execution of will.
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SECTION

WHEN, AND IN WHAT CASES, DEVISEES AND LEGATEES, ETC., SHALL MAKE CONTRIBUTION.

- 6542, 6543. When, and in what cases, devisees and legatees, etc., shall make contribution; proceedings.

LOST OR DESTROYED WILLS, HOW PROVED.

- 6544, 6545, 6546, 6547. Lost or destroyed wills may be proved; proof and proceedings.

TERM "WILL" INCLUDES CODICIL.

6548. Term "will" includes codicil.

WHO COMPETENT TO MAKE.

SECTION 6490. Every person of twenty-one years of age and upward, of sound mind (†), may, by last will and testament, devise all his estate, real and personal, and all interest therein.

SEC. 6491. Every person over the age of eighteen years, of sound mind, may, by last will and testament, dispose of goods and chattels (a). *Rev. Stat., chap. 157, secs. 1, 2.*

HOW EXECUTED AND ATTESTED.

SEC. 6492. Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

First. It must be subscribed by the testator at the end of the will, or by some person for him, at his request.

Second. Such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him to have been so made to each of the attesting witnesses.

Third. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed to be his will and testament.

Fourth. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

Fifth. Where the entire body of the will and the signature thereto shall be written in the proper handwriting of the testator or testatrix, such will may be established by the unimpeachable evidence of at least three disinterested witnesses to the handwriting and signature of each testator or testatrix, notwithstanding there may be no attesting witnesses to such will; but no will without such subscribing witnesses shall be pleaded in bar of a will subscribed in due form, as prescribed in this act (c).

SEC. 6493. Every person who shall sign the testator's name to any will, by his direction, shall write his own name as a witness to such will, and state that he signed the testator's name at his request (d).

(†) See *Abraham v. Wilkins*, 17—292; *McDaniel v. Crosby*, 19—533; *Tobin v. Jenkins*, 29—151; *Jenkins v. Tobin*, 31—306.

(a) Females of the age of eighteen years are of age for all purposes. SEC. 3464. The separate property of any *femme covert* may be bequeathed or devised by her "the same as if she were a *femme sole*." *Art. IX, sec. 7, Const.*

(c) See *Rogers v. Diamond*, 13—474; *Abraham v. Wilkins*, 17—292; *Horner, ex parte*, 27—443; *Vines v. Clingfost*, 21—309.

(d) See *Abraham v. Wilkins, sup.*; also, *In the matter of the will of Cornelius*, 14—675; *Guthrie v. Price*, 23—396.

SEC. 6494. No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked or altered otherwise than by some other will (†) in writing, or some other writing of the testator, declaring such revocation and alteration, and executed with the same formalities with which the will itself was required by law to be executed, or unless such will be burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some other person, in his presence, by his direction and consent, and when so done by another person the direction and consent of the testator, or the fact of such destruction, shall be proved by at least two witnesses.

SEC. 6495. If, after making any will disposing of the whole estate of the testator, such testator shall marry and have issue by such marriage, born either in his life-time or after his death, and the wife or the issue of such marriage shall be living at the death of the testator, such will shall be deemed revoked, unless provisions shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

SEC. 6496. A will executed by an unmarried woman shall be deemed revoked by her subsequent marriage (e).

SEC. 6497. A bond, agreement or covenant, made for a valuable consideration by a testator to convey any property devised or bequeathed in any last will and testament previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity, but such property shall pass by the devise or bequest, subject to the same remedies, on such bond, agreement or covenant, for the specific performance or otherwise against the devisees or legatees as might be had by law against the heirs of the testator or his next of kin, if the same had descended to them.

SEC. 6498. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate previously executed, but the devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

SEC. 6499. Whenever a testator shall have a child born after the making of his will, either in his life-time or after death, and shall die, leaving such child, so after born, unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, every such child shall succeed to the same portion of his father's estate, real and personal, as would have descended or been distributed to such child if the father had died intestate, and shall be entitled to recover the same portion from the devisees and legatees in proportion to and out of the parts devised or bequeathed to them by such will (f).

SEC. 6500. When any person shall make his last will and testament, and omit to mention the name of a child, if living, or the legal representatives of such child born and living at the time of the execution of such will, every such person, so far as regards such child, shall be deemed to have died intestate, and such child shall be entitled to such proportion, share and dividend of the estate, real and personal, of the testator as if he had died intestate; and such child

(†) See *Austin v. Fielder*, 40—144.

(e) But see art. IX, sec. 7, *Const.*

(f) See *Branton v. Branton*, 23—569.

shall be entitled to recover from the devisees and legatees in proportion to the amount of their respective shares, and the court exercising probate jurisdiction shall have power to decree a distribution of such estate according to the provisions of this and the preceding sections.

SEC. 6501. If the devisees or legatees refuse to pay the same, the party for the recovery thereof shall have a writ of *scire facias* against them, and, on the return of the same, the court shall enter judgment against such devisees or legatees, and award execution thereon.

SEC. 6502. Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, and such legatee or devisee shall die in the life-time of the testator, leaving a child or other descendant who will survive such testator, such legacy or devise shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of such devisee or legatee, as if such devisee or legatee had survived the testator and died intestate (g).

SEC. 6503. If, after making any will, the testator shall duly make and execute a second will, the destruction, canceling or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to his first will, or unless he shall duly republish his first will. *Rev. Stat., chap. 157, secs. 4-15.*

NUNCUPATIVE WILLS.

SEC. 6504. No nuncupative will shall be good where the estate bequeathed exceeds the value of five hundred dollars, nor unless it be proved by at least two witnesses, who were present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, called on some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of his last sickness, and at the dwelling of the deceased, or where he had resided for the space of ten days or more, except when the deceased may have been taken sick from home and died before his return.

SEC. 6505. All mariners at sea or soldiers in the military service may dispose of their wages and other personal property as at common law.

SEC. 6506. No proof of any nuncupative will shall be received, unless it be offered for probate within six months after the speaking of the testamentary words, nor unless the words, or the substance thereof, were reduced to writing and signed by witnesses within fifteen days after they were spoken.

SEC. 6507. No probate of any nuncupative will shall be made for twenty days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the substance thereof be committed to writing, and a citation be issued, accompanied with a copy of such will, and served on the widow and next of kin of the deceased, if any, that they may appear at a time in such citation specified, and contest the probate of such will, if they think proper. *Rev. Stat., chap. 157, secs. 24-27.*

(g) A devise to A for life, with remainder to B, does not lapse by the death of A in the life-time of the testator, but vests immediately in B on the death of the testator. *Wool et al. v. Williams et al.*, 15-682.

PROVING WILLS AND CONTESTING THEIR PROBATE.

SEC. 6508. The manner of proving wills and contesting their probate shall be as follows: Wills shall be proved before and admitted to record by the court of probate (h) of the county of the testator's residence. If he had no known place of residence in this state, and land is devised, then in the county where the land, or the greater part thereof, lies. If no land is devised, then in the county where he died, or that wherein his estate, or the greater part thereof, shall lie, or where there may be any debt or demand owing to him.

SEC. 6509. An appeal shall lie from the court of probate to the circuit court, and thence to the supreme court, upon every order admitting a will to record or rejecting it. The appeal to the circuit court shall be taken within one year after rendering the order of probate, or rejection in the court of probate (*), and to the supreme court within one (**) year after the final decision in the circuit court.

SEC. 6510. No will shall be received in evidence until it has been allowed and admitted to record by a court of probate (†), and its probate before such court shall be conclusive, until the same is superseded, reversed or amended. *Civil Code, sec. 513.*

SEC. 6511. Every will so proved, recorded and signed by the clerk of the court of probate, and attested by his seal of office, may be read as evidence without any further proof thereof. *Rev. Stat., chap. 157, sec. 29.*

SEC. 6512. The court of probate, or the clerk thereof in vacation, on being informed that a person has in his custody the will of a testator, may summon him, and, by proper process, compel him to produce the same. *Civil Code, sec. 513; Rev. Stat., chap. 157, sec. 56.*

SEC. 6513. When a will of a non-resident of this state, relative to an estate within this state, has been proved without the same, an authenticated copy thereof, and the certificate of probate thereof, may be offered for probate in this state. When such copy is so offered, the court to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator's domicile, and shall admit such copy to probate as a will of personalty in this state; and, if it appears from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of lands in this state, by the law thereof (i), such copy may be admitted to probate as a will of real estate. *Civil Code, sec. 513.*

SEC. 6514. When any will or any such authenticated copy is offered for probate, and a witness attesting the same resides out of this state, or, though in the state, is in confinement in another county or corporation under legal process, or is unable, from sickness, age or other infirmity, to attend the court before which the same is offered, or resides at a distance of more than fifty miles, such court may cause a commission to be issued, annexed to the said will or copy, and directed to any person authorized by law to take depositions in

(h) See art. VII, sec. 24, Const., and note. SEC. 1381.

(*) See SECS. 1385-1393, and note to SEC. 1389.

(**) But see SEC. 1276. See, also, the *Civil Code, secs. 513, 867.*

(†) See *Arlington v. McLemore*, 33-759.

(i) See SECS. 6531-6533; *Apperson v. Bolton*, 29-418.

other cases, to take his deposition. The deposition of such witness shall be taken and certified as depositions are taken in other cases, except that no notice need be given of the time and place of taking the same, unless it is a case in which the probate is opposed by some person who has made himself a party; and the proof so given shall have the same effect as if it had been given in the court from which the commission issued. *Civil Code, sec. 513.*

SEC. 6515. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the handwriting of the testator, and of the witnesses dead, insane or absent, and of such other circumstances as would be sufficient to prove such will on a trial at common law (†). *Rev. Stat., chap. 157, sec. 21.*

SEC. 6516. If it shall appear to the satisfaction of the court or clerk that all the subscribing witnesses to the will are dead, insane or absent, the court or clerk shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will in a trial at law. *Ib., sec. 22.*

SEC. 6517. All the testimony adduced on the question of the probate of any will shall be reduced to writing, and shall be signed by the witnesses and certified by the clerk (j). *Ib., sec. 23.*

PROBATE OF WILL BEFORE COURT, UPON NOTICE.

SEC. 6518. A person offering, or intending to offer, to a court of probate a will for probate may obtain from the clerk of such court process directed to the proper officer of any county, requiring him to summon any person interested in such probate to appear at the next term of such court and show cause why the said will should not be admitted to record. *Civil Code, sec. 513.*

SEC. 6519. The court to which a will is offered for probate may cause all persons interested in the probate to be summoned to appear on a certain day.

SEC. 6520. Any person interested in such probate may be summoned or proceeded against by order of appearance, and to any person so interested, who is an infant or of unsound mind, a guardian *ad litem* may be assigned as in other cases.

SEC. 6521. When the proceeding is taken to the circuit court, all necessary parties shall be brought before the court; and, upon the demand of any one of them, a jury shall be impaneled to try which or how much of any testamentary paper produced is or is not the last will of the testator (*). If no jury be demanded, the court shall determine that question, and the final decision given shall be a bar to any other proceeding to call the probate or rejection of the will in question, subject to the right of appeal or writ of error to the supreme court, as hereinbefore named; but nothing in this section shall preclude a court of chancery from its jurisdiction to impeach such final decision for such reason as would give it jurisdiction over any other judgment at law. *Civil Code, sec. 513.*

(†) See *Janes v. Williams*, 31—175.

(j) See SEC. 6527.

(*) See *Ludlow v. Flournoy*, 34—451.

PROBATE OF WILL BEFORE COURT, OR CLERK IN VACATION, WITHOUT NOTICE.

SEC. 6522. When any will shall be exhibited for probate, the court of probate, or clerk thereof in vacation, in person or by his deputy, may and shall receive the probate thereof in common form, without summoning any party, and shall grant a certificate of probate, or, if the will be rejected, shall grant a certificate of rejection; but such action by such clerk or deputy, in vacation, shall be subject to the confirmation or rejection of the court. *Rev. Stat., chap. 157, sec. 18; Civil Code, sec. 513, subdivision 11; act April 16, 1873.*

BY WHOM AND WHEN A RE-TRIAL OF THE QUESTION OF PROBATE MAY BE HAD IN CHANCERY.

SEC. 6523. Any person interested who, at the time of the final decision in the circuit court, resided out of this state, and was proceeded against by order of appearance only, without actual appearance or being personally served with process, and any other person interested who was not a party to the proceedings by actual appearance or being personally served with process, may, within three years after such final decision in the circuit court, by a bill in chancery, impeach the decision and have a re-trial of the question of probate; and either party shall be entitled to a jury for the trial thereof. An infant, not a party, shall not be barred of such proceedings in chancery until twelve months after attaining full age (*).

SEC. 6524. But no such proceeding in chancery for establishing or avoiding a will shall operate further than is necessary to the rights of such infant, non-resident or other party, or otherwise affect the rights of any other person interested in the probate. *Civil Code, sec. 513, subdivisions 12 and 13.*

SEC. 6525. If any person interested in the probate of any will shall appear within five years after the probate or rejection thereof, and, by petition to the circuit court of the county in which such will was established or rejected, pray to have any such will rejected, if previously established, or proven, if previously rejected by the court of probate, it shall be the duty of the circuit court to direct an issue to try the validity of such will, which issue shall in all cases be tried by a jury (†).

SEC. 6526. If no person shall appear within the time aforesaid to contest the validity of any such will, the probate or rejection thereof shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period after their respective disabilities are removed (‡). *Rev. Stat., chap. 157, secs. 32-34.*

(*) This section does not authorize a court of equity to review the decision of the probate court upon the probate of a will where there has been no appeal to the circuit court. *Mitchell v. Rogers*, 40—91.

(†) As to issue, burden of proof, etc., in a proceeding under this statute, see *Tobin v. Jenkins*, 29—151; *Rogers v. Diamond*, 13—474; *McDaniel v. Crosby*, 19—533; *Jenkins v. Tobin*, 31—306.

(‡) Sections 6525, 6526, have given the digester and the examiner considerable embarrassment. Are they in force? The remedies of parties wishing to contest the probate of a will given by the Civil Code seem to cover the whole ground. But in *Tobin v. Jenkins*, 29—152, the petition was filed under section 6525, after the Code went into effect. The question was not raised, however, as to whether the section had been repealed by the Code, nor was it noticed by the court. However, the case was reversed, and sent down with instructions to the court below to "make up an issue *devisavit vel non* to be tried by a jury." When the same case came before the court on a second appeal (*Jenkins v. Tobin*, 31—307), the question of the repeal of the statute was raised; and the court mentioned the fact, that, though the proceeding was commenced after the Code went

EVIDENCE TAKEN ON PROOF OF WILL, ADMITTED WHEN.

SEC. 6527. The record of what is proved or deposed in court by witnesses, on the motion to admit a will to record, and any depositions lawfully taken out of court, on such motion, of witnesses who can not be produced at a trial afterward before a jury, may, on such trial, be admitted as evidence, to have such weight as the jury shall think they deserve (k).

WILLS, ETC., TO BE RECORDED—CERTIFIED COPY EVIDENCE.

SEC. 6528. Every will or authenticated copy so admitted to record by any court, with the proofs and examinations, shall be recorded by the clerk thereof and remain in his office, except during such time as the same may be carried to another court under *subpoena duces tecum*. *Civil Code, sec. 513; Rev. Stat., chap. 157, sec. 28.*

SEC. 6529. The record of any such will made, proved and recorded as aforesaid, and the exemplification of such record by the clerk of the court in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proved, and may in like manner be repelled by contrary proof. *Rev. Stat., chap. 157, sec. 30.*

DEPOSIT OF WILL WITH COUNTY CLERK.

SEC. 6530. A will may be deposited by the person making it, or any one for him, with the clerk of the court of probate of the county of his residence, for safe keeping, upon payment of a fee of one dollar to the clerk, who shall receive, keep and deliver the same according to the directions on a sealed envelope. If there are no such directions, or the party entitled does not apply, the will shall be handed to and opened by the next or some succeeding court of probate after the death of the testator, and there retained for probate. *Civil Code, sec. 513.*

WILLS MADE AND PROVED OUT OF THIS STATE PASS PROPERTY IN THIS STATE,
WHEN, HOW.

SEC. 6531. Citizens of any of the United States, or territories thereof, owning real or personal property in this state may devise and bequeath the same by last will and testament, executed and proved according to the laws of this state, or any state or territory in which the will may be made (l).

SEC. 6532. Copies of such wills shall be recorded in the same manner as

into effect, yet that, as the will was probated before that time, the contestants had a right to proceed under section 6525, and the court then said that the question had been decided on the previous appeal. As it is obvious that there can be no vested right in a civil remedy, the ground of this ruling is not very apparent. In *Mitchell v. Rogers*, 40—94, the question was alluded to again, though not directly involved in the case, and mention was made of the fact that it is now still further complicated by the clause of the constitution of 1874 giving exclusive original jurisdiction in the probate of wills to the probate court; but the court expressly declined to pass on the question as to whether these sections remain in force. They are here taken from Gould's Digest, having been omitted from Gantt's Digest, doubtless by reason of a conviction that they had been repealed by the Civil Code.

(k) See SEC. 6517.

(l) See SEC. 6513.

wills executed and proven in this state, and shall be admitted in evidence in the same manner.

SEC. 6533. Any such will may be contested and annulled within the same period and in the same manner as wills proven in this state. *Rev. Stat., chap. 157, secs. 36, 37, 38.*

WILLS DEVISING REAL ESTATE, WHERE TO BE RECORDED.

SEC. 6534. In all cases where lands devised by last will and testament are situate in different counties, a copy of such will shall be recorded in each county. *Rev. Stat., chap. 157, sec. 31.*

SUBSCRIBING WITNESSES, COMPETENCY OF (m).

SEC. 6535. If any person shall be a subscribing witness to the execution of any will wherein any beneficial devise, legacy, interest or appointment of real or personal estate shall be made to such witness, and such will can not be proved without the testimony of such witness, such devise, legacy, interest or appointment shall be void, so far only as concerns such witness, or any person claiming under him, and such person shall be a competent witness, and may be compelled to testify respecting the execution of such will, in like manner as if no devise or bequest had been made to him. *Ib., sec. 39.*

SEC. 6536. If such witness would be entitled to any share of the testator's estate in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will, and he may recover the same from the devisees or legatees named in the will, in proportion to and out of the parts devised and bequeathed to them.

SEC. 6537. If such will be attested by a sufficient number of other witnesses competent to prove such will as required by this act, then such devise, legacy or appointment shall be valid.

SEC. 6538. If by any will any real estate be charged with any debt, and a creditor whose debt is so charged hath attested the execution of such will, such creditor shall be admitted as a witness to the execution of such will.

SEC. 6539. If any person shall attest the execution of any will to whom any legacy or bequest is thereby given, and such person before giving testimony concerning the execution of such will shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest upon tender thereof, such person shall be admitted as a witness to the execution of such will, and the credit of such witness shall be subject to the consideration of the court and jury.

SEC. 6540. If any legatee who shall attest the execution of any will shall die in the life-time of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, or tender made thereof, such legatee shall be deemed a legal witness to the execution of such will.

SEC. 6541. No person to whom any estate, interest, gift or appointment shall be given or made which is by this act declared to be void, or who shall

(m) See *Sched. Const., sec. 2.*

have refused to receive any such legacy, or bequest, or tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he has been examined, demand or receive any profit or benefit from any such estate, interest, gift or appointment so given or made to him by such will, or demand, receive or accept from any person any such legacy or bequest, or any satisfaction or compensation therefor. *Ib.*, secs. 40-45.

WHEN, AND IN WHAT CASES, DEVISEES AND LEGATEES, ETC., SHALL MAKE CONTRIBUTION.

SEC. 6542. When any testator, in his last will, shall give any chattels or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other devisees, legatees and heirs shall refund their proportional parts of such loss to such person from whom the bequest may have been taken.

SEC. 6543. When any devisee, legatee or heirs shall be required to refund any part of the estate received by them for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the court of probate shall, upon the petition of the party interested in such contribution, and due notice being given to the devisee, legatee, heir, executor or administrator, order a contribution and distribution of such estate according to equity, and enforce such order with like effect as decrees of courts of equity. *Ib.*, secs. 46, 47.

LOST OR DESTROYED WILLS, HOW PROVED.

SEC. 6544. Whenever any will shall be lost, or destroyed by accident or design, the court of chancery shall have the same power to take proof of the execution of such will, and to establish the same, as in the case of lost deeds.

SEC. 6545. Upon such will being established by the decree of a competent court, such decree shall be recorded by the clerk of the court before which the will might have been proven if it had not been lost or destroyed; and letters testamentary or of administration, with the will annexed, shall be issued thereon by such clerk in the same manner as upon a will duly proven before him.

SEC. 6546. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, the court to which such application shall be made shall have authority to restrain the administrator so appointed from any act or proceedings which would be injurious to the legatees or devisees claiming under such lost or destroyed will.

SEC. 6547. No will of any testator shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the life-time of the testator; nor unless its provisions be clearly and distinctly proved by at least two witnesses, a correct copy or draft being deemed equivalent to one witness. *Ib.*, secs. 48-51.

TERM "WILL" INCLUDES CODICIL.

SEC. 6548. The term "will," as used in this act, shall be so construed as to include all codicils, as well as wills. *Ib.*, sec. 55.

CHAPTER CLVI.

WOLF SCALPS.

SECTION

6549. County court may declare premium for.

6550. How persons killing may obtain certificate.

SECTION

6551. Form of certificate.

6552. Penalty for taking wolf out of pit with intent to cheat.

SECTION 6549. The county court may declare the sum to be paid as a premium on wolf scalps, and any person who kills a wolf shall receive the sum so declared, to be paid out of the treasury of the county in which such wolf shall have been killed. *Act Feb. 3, 1843, sec. 2.*

SEC. 6550. Any person killing a wolf shall exhibit the scalp, with both ears of said wolf, to a magistrate of the county, within thirty days after killing the same; and such magistrate shall strictly examine such person, on oath, or any other person, being a competent witness, touching the time when and place where, and how such scalp was obtained, and whether the wolf to which such scalp belonged was taken and killed within the county; and, when such magistrate shall be satisfied that the person exhibiting said scalp is entitled to the above-mentioned premium, he shall certify said facts to the county court, and the said magistrate shall burn or otherwise destroy all said scalps for which he has given a certificate. *Act Dec. 17, 1838, sec. 3.*

SEC. 6551. The certificate to be given by the magistrate, as required by the foregoing section, shall be, as near as circumstances will admit, in the following form, to wit:

STATE OF ARKANSAS, }
COUNTY OF ———. }

I, A B, magistrate for the county aforesaid, do hereby certify that the sum of ——— dollars is due to C D, as a premium for his killing of a wolf or wolves (as the case may be); and the said C D is entitled to an allowance for that sum.

Given under my hand this ——— day of ———, A. D. 18—.

A B, J. P. (a).

SEC. 6552. If any person shall take away any wolf out of any pit or trap, made or set to catch the same, thereby to cheat or defraud the owner of such pit or trap of his premium, such person taking away as aforesaid shall forfeit and pay to the owner of such pit or trap the sum of four dollars for every wolf taken out as aforesaid, with costs of suit, to be recovered by an action founded on this statute. *Act Dec. 17, 1838, secs. 3, 4.*

(a) So much of this act as authorized the justice to issue a certificate directly on the county treasurer is repealed by section 1410.

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FORMS IN CIVIL CASES.

SUMMONS AND WARNING ORDER.

No. 1.—Summons in Actions by Proceedings at Law.

[Section 4968.]

The State of Arkansas to the Sheriff of Pulaski County :

You are commanded to summon Richard Roe to answer, on the first day of the next (March) term of the Pulaski Circuit Court, a complaint filed against him in said court by John Doe, and warn him that, upon his failure to answer, the complaint will be taken for confessed; and you will make due return of the summons on the first day of the next (March) term of said court.

[L. s.] Witness my hand, and the seal of said court, this tenth day of December, 1884.

A. B., Clerk.

No. 2.—Summons in Actions by Equitable Proceedings.

[Section 4971.]

The State of Arkansas to the Sheriff of Pulaski County :

You are commanded to summon Richard Roe to answer, in twenty days after the service of this summons upon him, a complaint in equity, filed against him in the Pulaski Circuit Court by John Doe, and warn him, upon his failure to answer, the complaint will be taken for confessed; and you will make due return of this summons on the first day of the next (March) term of said court.

[L. s.] Witness my hand, and the seal of said court, this tenth day of December, 1884.

A. B., Clerk.

No. 3.—Summons by a Justice, etc.

[Section 4036.]

The State of Arkansas to any Constable of Pulaski County :

You are commanded to summon Richard Roe to appear before me, at my office in Big Rock Township, in said county, on the — day of —, 18—, to answer the claim of John Doe for debt due upon contract (or according to the facts), amounting to forty-five dollars; and notify said Richard Roe of the time and place of trial, and have then and there this writ, with due return upon it.

Given under my hand this tenth day of December, 1884.

Thomas Jones, J. P.

No. 4.—Summons from Probate Court on Petition for Allotment of Dower.

[Section 2606.]

The State of Arkansas to the Sheriff of Pulaski County :

You are commanded to summon Richard Roe, Walter Jones, Cornelius Keeper and Catherine Keeper, his wife, to appear in the Pulaski Probate Court, on the first day of its next (January) term, and answer the petition filed against them by Mary Smith for allotment of dower.

[L. s.] Witness my hand, and the seal of said court, this tenth day of December, 1884.

A. B., Clerk.

(1251)

FORMS IN CIVIL CASES.

No. 5.—Affidavit for Warning Order.

[Section 4969.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that the defendant, John Doe, is a non-resident of this state.

Richard Roe.

Subscribed and sworn to before me this tenth day of December, 1884.

A. B., Clerk.

No. 6.—Same by an Attorney.

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

John Jones states that he is the attorney of the plaintiff, Richard Roe, who is absent from Pulaski County, and that the defendant, John Doe, is a non-resident of this state.

John Jones.

Subscribed and sworn to before me this tenth day of December, 1884.

A. B., Clerk.

No. 7.—Warning Order.

[Section 4969.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Warning Order.
 John Doe, defendant. }

The defendant, John Doe, is warned to appear in this court within thirty days, and answer the complaint of the plaintiff, Richard Roe.

A. B., Clerk.

December 10, 1884.

REPLEVIN.

No. 8.—Affidavit to Obtain a Delivery of Personal Property.

[Section 5572.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that the horse claimed by him in this action is a bay gelding, about ten years old, and is worth one hundred dollars, and, for the detention of said horse, he believes he ought to recover fifty dollars; that he is the owner of said horse, and is entitled to the immediate possession of him; that said horse is wrongfully detained by the defendant, John Doe; that, according to the best knowledge, information and belief of plaintiff, said defendant detains said horse under a false claim of being the owner thereof; that said horse was not taken for tax or fine against the plaintiff, or under an order or judgment of a court against him, or under an execution or attachment against his property; and that his cause of action herein accrued within one year past.

Richard Roe.

Subscribed and sworn to before me this tenth day of January, 1885.

Thomas Jones, J. P.

NOTE.—It is not necessary in a justice's court to file a complaint where the affidavit contains a statement of the facts constituting the cause of action. *Hanner v. Bailey*, 30—681. When the action is in the circuit court the style of that court should be given in all the proceedings as it is in No. 9.

No. 9.—Affidavit to Obtain a Delivery of Personal Property taken under an Execution.

[Section 5572.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that the horse claimed by him in this action is a bay gelding, about ten years old, is worth three hundred dollars, and, for the taking and detention of said horse, he believes he ought to recover one hundred dollars; that he is the owner of said horse, and entitled to the immediate possession of him; that said horse was wrongfully taken from him, and is wrongfully detained by the defendant, John Doe, under an execution from the Pulaski Circuit Court in favor of John Miles against Henry Stevens; and that the plaintiff's cause of action herein accrued within one year past (*).

Richard Roe.

Subscribed and sworn to before me this tenth day of January, 1885.

A. B., Clerk.

NOTE.—If the affidavit is also for an order of arrest, proceed after the (*) as in No. 10. For complaint in an action of replevin, see No. 68.

No. 10.—Affidavit to Obtain a Delivery of Personal Property, or the Arrest of the Defendant, if the Property can not be had.

[Sections 5572, 5774.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that the horse claimed by him in this action is a bay gelding, about ten years old, and is worth one hundred dollars, and, for the detention of said horse, he believes he ought to recover fifty dollars; that he is the owner of said horse, and is entitled to the immediate possession of him; that the horse is wrongfully detained by the defendant, John Doe; that, according to the best knowledge, information and belief of plaintiff, said defendant detains said horse under a false claim of being the owner thereof; that said horse was not taken for tax or fine against the plaintiff, or under an order or judgment of a court against him, or under an execution or attachment against his property; and that his cause of action herein accrued within one year past. And he further states that he believes the said horse has been concealed [or has been removed or disposed of, in any way, according to the fact believed to exist], with intent to defeat this action.

Richard Roe.

Subscribed and sworn to before me this tenth day of January, 1885.

Thomas Jones, J. P.

No. 11.—Order for Delivery of Property and Summons.

[Section 5574.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.

Richard Roe, plaintiff, }
 against } Order of delivery.
 John Doe, defendant. }

The State of Arkansas to any Constable of Pulaski County:

You are commanded to take a bay gelding, about ten years old, and of the value of one hundred dollars, from the possession of the defendant, John Doe, and deliver him to the plaintiff, Richard Roe, upon his giving the bond required by law; and you are also commanded to summon the said John Doe to appear before me at my office in Big Rock Township, in said county, on the twenty-second day of January, 1885, to answer the claim of the said plaintiff, Richard Roe, for said horse, and also for damages, amounting to fifty dollars, for his detention, and notify the said John Doe of the time and place of trial.

You will make due return of this order before me on the twenty-second day of January, 1885.

Given under my hand this tenth day of January, 1885.

Thomas Jones, J. P.

No. 12.—Order for Delivery of Property, or, if it can not be had, for Arrest of Defendant.

[Section 5574.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Order of Delivery.
 John Doe, defendant. }

The State of Arkansas to any Constable of Pulaski County:

You are commanded to take a bay gelding, about seven years old, and of the value of one hundred dollars, from the possession of the defendant, John Doe, and deliver him to the plaintiff, Richard Roe, upon his giving the bond required by law; and you are also commanded to summon the said John Doe to appear before me at my office in Big Rock Township, in said county, on the twenty-second day of January, 1885, to answer the claim of the said plaintiff, Richard Roe, for said horse, and also for damages, amounting to fifty dollars, for his detention, and notify said John Doe of the time and place of trial; and in case you can not find the said bay gelding within said county, so as to take and deliver the same as you are above commanded, then you are further commanded to take the body of the said John Doe, and that you have him before me at the place and on the day above mentioned, to answer the said Richard Roe of the premises aforesaid.

You will make due return of this order before me on the twenty-second day of January, 1885.

Given under my hand this tenth day of January, 1885.

Thomas Jones, J. P.

NOTE.—Nos. 11 and 12 may be easily changed into appropriate forms when the action is in the circuit court.

No. 13.—Bond of Plaintiff to Obtain Delivery of the Property.

[Section 5575.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake that the plaintiff, Richard Roe, shall duly prosecute this action, and shall perform the judgment of the court therein by returning the horse ordered to be delivered to the plaintiff if a return is adjudged, and by paying to the defendant, John Doe, such sums of money as are adjudged in this action against the plaintiff, not exceeding two hundred dollars, and the costs of this action.

January 10, 1885.

Richard Roe,
John Smith.

Attest: John Hudson, Constable.

John Smith states that he is a resident of the State of Arkansas, that he is worth four hundred dollars beyond the amount of his debts, and has property in said state, subject to execution, of the value of two hundred dollars.

John Smith.

Subscribed and sworn to before me this tenth day of January, 1885.

John Hudson, Constable.

No. 14.—Bond of Plaintiff where the Property was taken under Execution.

[Section 5578.]

Pulaski County, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake that the plaintiff, Richard Roe, shall duly prosecute this action, and shall duly perform the judgment of the court therein by returning the horse ordered to be delivered to the plaintiff if a return is adjudged, and pay to the defendant, John Doe, or to John Miles, the plaintiff in an execution from the Pulaski Circuit Court against Henry Stevens, under which said horse was taken by said John Doe, as may be directed by the court, such sums of money as are adjudged in this action against the plaintiff, not exceeding two hundred dollars, and the costs of this action.

Richard Roe,
John Smith.

January 10, 1885.

Attest: John Hudson, Constable.

[Affidavit of Surety as in No. 13.]

No. 15.—*Bond of Defendant to Retain the Property.*

[Section 5581.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake and are bound to the plaintiff, Richard Roe, in the sum of two hundred dollars, that the defendant, John Doe, shall perform the judgment of the court in this action.

John Doe,
 Henry King.

January 10, 1885.

Attest: John Hudson, Constable.

[Affidavit as in No. 13.]

No. 16.—*Bond to Obtain Defendant's Discharge from Arrest.*

[Section 5577.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake and are bound to John Hudson, constable of Big Rock Township, in the County of Pulaski, in the sum of two hundred dollars, that the defendant, John Doe, shall abide the order and judgment of the court in this action, and that he will cause special bail to be put in if the same be required.

John Doe,
 Henry King.

January 10, 1885.

Attest: John Hudson, Constable.

[Affidavit as in No. 13.]

No. 17.—*Affidavit of Person Claiming Property.*

[Section 5583.]

Richard Roe, plaintiff, }
 against } Before Thomas Jones, justice of the peace for Big Rock Township, in Pulaski County.
 John Doe, defendant. }

Joseph Hale states that he is the owner and entitled to the possession of a bay gelding taken by John Hudson, constable of Big Rock Township, in Pulaski County, from the possession of John Doe, under an order of delivery issued in the above entitled cause, by Thomas Jones, a justice of the peace for said township.

Joseph Hale.

Subscribed and sworn to before me this tenth day of January, 1885.

Thomas Jones, J. P.

No. 18.—*Bond to Indemnify Constable Against Claimant of Property.*

[Section 5583.]

Richard Roe, plaintiff, }
 against } Before Thomas Jones, justice of the peace for Big Rock Township, in Pulaski County.
 John Doe, defendant. }

Joseph Hale, having claimed to be the owner of a bay gelding taken from the possession of John Doe, the defendant in the above entitled action, by John Hudson, the constable of Big Rock Township, in Pulaski County, under an order issued in said action by Thomas Jones, a justice of the peace for said township, and having delivered to said constable his affidavit that he is entitled to the possession of said gelding, now we undertake and are bound to the said constable, John Hudson, in the sum of two hundred dollars, that we will indemnify him against the said claim of the said Hale, and against all damages he may suffer or sustain by reason of the same, or by reason of the delivery of said gelding to Richard Roe, the plaintiff in said action.

Richard Roe,
 John Smith.

January 10, 1885.

ATTACHMENT.

No. 19—Affidavit for a General Attachment.

[Section 310.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that the claim in this action against the defendant, John Doe, is for money due upon a bill of exchange accepted by him, and that it is a just claim; that he ought, as he believes, to recover thereon two hundred dollars; and that said Doe has departed from this state with intent to defraud his creditors [or state any other ground for an attachment in section 309.]

Richard Roe.

Subscribed and sworn to before me this tenth day of January, 1885.

Thomas Jones, J. P.

NOTE.—Before a justice of the peace, the affidavit answers the purpose of a complaint or statement of the cause of action. *Tignor v. Bradley*, 32—781. If the action is in the circuit court, give the style of the court in all the forms as it is in No. 25.

No. 20—Bond of Plaintiff to Obtain Attachment.

[Section 312.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake that the plaintiff, Richard Roe, shall pay to the defendant, John Doe [where there are several defendants, the bond should run as follows, viz.: "Pay to the defendants, John Doe and John West, which they, or either of them, may sustain," etc.], all damages which he may sustain by reason of the attachment in this action, if the order therefor is wrongfully obtained.

Richard Roe,
John Smith.

January 10, 1885.

Attest: Thomas Jones, J. P. (or, if in the circuit court, "A. B., Clerk.")

No. 21.—Order of General Attachment.

[Section 313.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Order of Attachment.
 John Doe, defendant. }

The State of Arkansas to any Constable of Pulaski County:

You are commanded to attach and safely keep the property of the defendant, John Doe, in your county, not exempt from execution, or so much thereof as will satisfy the claim of Richard Roe, the plaintiff in this action, for two hundred dollars, and twenty dollars for the cost thereof; and you are also commanded to summon the said John Doe to appear before me at my office in Big Rock Township, in said county, on the twenty-second day of January, 1885, to answer the claim of the said plaintiff for debt due upon a bill of exchange, amounting to the sum of two hundred dollars, and notify said John Doe of the time and place of trial; and also to summon Samuel Gray and such other persons as the plaintiff may suggest, as garnishees, to answer in this action before me, on said day and at the place above mentioned. You will make due return of this order before me on the twenty-second day of January, 1885.

Given under my hand this tenth day of January, 1885.

Thomas Jones, J. P.

NOTE.—If the order is issued by the clerk, it should conclude and be attested as in No. 27.

The above form embraces a summons; and this will not invalidate the order, whether the action be in a justice's court or in the circuit court. *Weil v. Kiltay*, 40—528. But in the latter it is the usual, and perhaps more regular, practice, to issue the summons separately.

No. 22.—Bond for Attached Property by Person in Possession.

[Section 327.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake and are bound to the plaintiff, Richard Roe, in the sum of two hundred dollars, that the defendant, John Doe, shall perform the judgment of the court in this action, or that the undersigned, John Stiles, will have the bay horse attached in this action, or its value, one hundred dollars, forthcoming and subject to the order of the court for the satisfaction of such judgment.

John Stiles,
 Thomas Brown.

January 10, 1885.

Attest: John Hudson, Constable (or, if taken by the sheriff, "C. D., Sheriff.")

No. 23.—Bond of Plaintiff to a Joint Owner of the Attached Property.

[Section 324.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake that the plaintiff, Richard Roe, shall pay to John Brooks, who claims to be a joint owner with the defendant, John Doe, of a bay horse, seized under an attachment in this action, the damages which said Brooks may sustain by reason of the attachment, if the order therefor is wrongfully sued out.

Richard Roe,
 John Smith.

January 10, 1885.

Attest: John Hudson, Constable.

No. 24.—Bond of Defendant to Obtain the Discharge of a General Attachment.

[Section 337.]

County of Pulaski, }
 Big Rock Township. } Before Thomas Jones, justice of the peace for said township.
 Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake and are bound to the plaintiff, Richard Roe, in the sum of two hundred and thirty dollars, that the defendant, John Doe, shall perform the judgment of the court in this action.

John Doe,
 Thomas Brown.

No. 25.—Affidavit to Obtain a Specific Attachment.

[Section 365.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that his claim in this action against the defendant, John Doe, is for money due upon a promissory note, and that it is a just claim; that he ought, as he verily believes, to recover thereon the sum of four hundred dollars, for which amount he has a lien on the ten bales of cotton described in his complaint by virtue of the mortgage therewith exhibited; and that said bales of cotton are about to be sold, concealed or removed from this state [or, "and that he has reasonable cause to believe, and does believe, that, unless prevented by the court, the said bales of cotton will be sold, concealed or removed from this state"].

Richard Roe.

Subscribed and sworn to before me this tenth day of January, 1885.

A. B., Clerk.

FORMS IN CIVIL CASES.

No. 26.—Bond to Obtain a Specific Attachment.

[Section 368.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake and are bound to the defendant, John Doe, in the sum of eight hundred dollars, that the plaintiff, Richard Roe, shall pay to the said defendant the damages which he may sustain by reason of the attachment in this action, if the order therefor is wrongfully obtained.

Richard Roe,
 John Smith.

January 10, 1885.

Attest: A. B., Clerk.

NOTE.—The attachment may be granted on such terms and conditions as to security for damages as may be just. SEC. 367.

No. 27.—Order for a Specific Attachment.

[Section 370.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Order of Attachment.
 John Doe, defendant. }

The State of Arkansas to the Sheriff of Pulaski County:

You are commanded to attach and safely keep the ten bales of cotton in the possession of John Doe, to satisfy the claim of the plaintiff in this action for four hundred dollars; and to make due return of this order on the first day of the next (March) term of the Pulaski Circuit Court.

[L. s.] Witness my hand and the seal of said court this tenth day of January, 1885.

A. B., Clerk.

No. 28.—Bond of a Person with whom the Cotton is Left.

[Section 368.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake to pay to the plaintiff, Richard Roe, such sums of money, not exceeding four hundred dollars, as may be adjudged to him in this action, or that the ten bales of cotton attached herein shall be forthcoming, and subject to the order of the court, for the satisfaction of such judgment as may be rendered in this action, whichever shall be directed by the court.

John Simpson.
 Thomas Brown.

January 10, 1885.

Attest: C. D., Sheriff.

No. 29.—Bond of Defendant to Discharge Attachment against Cotton.

[Section 372.]

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake and are bound to the plaintiff, Richard Roe, in the sum of four hundred dollars, that John Doe shall perform the judgment of the court in this action.

John Doe,
 Thomas Brown.

January 10, 1885.

Attest: A. B., Clerk.

NOTE.—The court may direct the terms and conditions of the defendant's bond to discharge the attachment. SEC. 372.

No. 30.—Interpleader in Attachment.

[Section 390.]

County of Pulaski, }
Big Rock Township. } Before Thomas Jones, justice of the peace for said township.

Richard Roe, plaintiff,
against

John Doe, defendant. }

I, John Smith, do solemnly swear that the bay horse attached in this action as the property of said defendant is my property, and not liable to seizure on the order of attachment issued in this case.

John Smith.

Subscribed and sworn to before me this tenth day of January, 1885.

Thomas Jones, J. P.

[For Form of Appraisement (by two citizens), see No. 43.]

No. 31—Form of Bond.

[Section 391.]

County of Pulaski, }
Big Rock Township. } Before Thomas Jones, justice of the peace for said township.

Richard Roe, plaintiff,
against

John Doe, defendant. }

Bond.

We undertake and are bound to the plaintiff, Richard Roe, in the sum of four hundred dollars, that John Smith will interplead before said justice of the peace, on the twenty-second day of January, 1885, when the order of attachment in this case is returnable, and prosecute to judgment, without delay, his interpleader for the property attached in this case and claimed by him, to wit: one bay horse; and if said property shall, on the trial of such interpleader, be found to be the property of said defendant, John Doe, and said plaintiff, Richard Roe, shall recover judgment against said defendant, that said John Smith will deliver said property to the constable, John Hudson, or his successor in office, whenever demanded by said constable, after execution upon such judgment comes to his hand to be levied thereon.

John Smith,
John Walker.

January 10, 1885.

NOTE.—If the action is in the circuit court, it will be entitled and the style of court inserted as in form No. 26. In such case, in lieu of words "before said justice," etc., insert the words "at the next term of the court to which the order of attachment in this action is returnable, and prosecute," etc.

GARNISHMENT.

*No. 32.—Summons against Garnishee after Judgment.**

[Section 3410.]

County of Pulaski.

The State of Arkansas to the Constable of Big Rock Township, in Pulaski County, greeting:

Whereas, John Doe, on the second day of October, 1884, before Thomas Jones, one of the justices of the peace in and for the township of Big Rock, in the County of Pulaski, obtained judgment against Richard Roe for two hundred dollars debt, fifty dollars damages, and thirty dollars costs of suit, which judgment remains unsatisfied; and it being represented to said justice by said plaintiff that John Smith is indebted to said defendant, or has in his hands or possession goods, chattels, moneys, credits or effects belonging to said defendant, you are, therefore, hereby commanded to summon the said John Smith to appear before the undersigned justice, at my office, in said township, on the twenty-second day of December, 1884, at ten o'clock in the forenoon, then and there to answer what goods, chattels, credits, moneys or effects he may have in his hands or possession belonging to said defendant to satisfy said judgment, and to answer such further interrogatories as may then there be exhibited against him. Hereof fail not.

Given under my hand this tenth day of December, 1884.

Thomas Jones, J. P.

No. 33.—Allegations and Interrogatories in Case of Garnishment.

[Section 3412.]

John Doe, plaintiff,
 against
 Richard Roe, defendant,
 John Smith, garnishee. } Before Thomas Jones, justice of the peace for Big Rock Township, in Pulaski County.

Comes said plaintiff and files the following allegations and interrogatories:

Said plaintiff alleges:

First—That said John Smith, the garnishee herein, was, on and after the date of the service of the writ of garnishment herein, indebted to said Richard Roe, the defendant, to wit: in the sum of one hundred dollars.

Second—That said garnishee, on and after the date aforesaid, had in his hands and possession certain goods, chattels, moneys, credits and effects belonging to said defendant of the value of one hundred dollars.

And the plaintiff propounds to the said garnishee the following interrogatories:

First—Were you, on or after the date of the service of the writ of garnishment, indebted to the defendant; if so, how were you indebted, and for what amount?

Second—Had you in your hands and possession, on or after said date, any goods, chattels, moneys, credits or effects belonging to said defendant; if so, what was the nature and value thereof?

John Doe, plaintiff.

NOTE.—The answer of the garnishee can easily be framed from this form, in accordance with the facts.

INJUNCTION.

No. 34.—Bond of Plaintiff to Obtain an Injunction when no Special Direction has been given by the Court or Judge.

[Section 3745.]

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Bond.

We undertake that the plaintiff, Richard Roe, shall pay to the defendant, John Doe [when there are several defendants the bond shall run as follows, viz.: "Pay to the defendants, John Doe and John West, the damages, not exceeding four hundred dollars, which they or either of them may sustain," etc.], the damages, not exceeding five hundred dollars [the sum specified in the order of the court or judge granting the injunction], which may be sustained by reason of the injunction in this action, if it is finally decided that said injunction ought not to have been granted.

Richard Roe,
 John Smith.

January 10, 1885.

Attest: A. B., Clerk.

No. 35.—Order of Injunction.

[Section 3747.]

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Order of Injunction.

The State of Arkansas to John Doe:

You are enjoined from all further proceedings upon the judgment of the Pulaski Circuit Court, rendered at its (March) term, 1884, in your favor, against Richard Roe, for the sum of three hundred dollars and costs, until further order of this court.

[L. s.] Witness my hand and the seal of said court this tenth day of January, 1885.

A. B., Clerk.

EXECUTION AND PROCEEDINGS UNDER

No. 36.—Execution on Stay or Sale Bond.

[Sections 3035-3041.]

The State of Arkansas to the Sheriff of Pulaski County, greeting:

You are commanded that, of the estates of John Doe and Henry King, you cause to be made the sum of five hundred dollars, which they owe to Richard Roe, on a stay (or sale) bond, executed by them on the

tenth day of October, 1884, with interest thereon from the tenth day of October, 1884, until paid; also, the sum of two dollars, for his costs; which bond is on file in the office of the clerk of the Pulaski Circuit Court; and that you have said sums of money within sixty days, to render to the said Richard Roe his debt, interest and costs aforesaid.

[L. s.] In witness whereof, I have hereunto set my hand and affixed the seal of said court, this tenth day of December, 1884.

A. B., Clerk.

Indorsement.—"This execution was issued upon a sale bond, and no security of any kind will be taken."

A. B., Clerk.

NOTE.—This is substantially the form to be used by a justice of the peace under section 4095. He should direct the execution and make it returnable as in form No. 38.

[For Form of Ordinary Execution, see SEC. 2968.]

No. 37.—*Venditioni Exponas.*

The State of Arkansas to the Sheriff of Pulaski County:

We command you that you expose to sale the estate of Charles Bell, to wit: one bay horse and one gold watch, to the value of one thousand dollars, which, according to our command, you have taken into your hands, and which remain in your hands unsold, as you have certified to our Pulaski Circuit Court, to satisfy Willis Strother the sum of one thousand dollars, whereof in our said court he has recovered execution against the said Charles Bell by virtue of a judgment in said court; and that you have said sum of money within sixty days, to render to the said Willis Strother his debt, interest and costs.

[L. s.] In witness whereof, I have hereunto set my hand and affixed the seal of said court this tenth day of December, 1884.

A. B., Clerk.

No. 38.—*Execution from Justice of the Peace.*

[Section 4104.]

The State of Arkansas to any Constable of Pulaski County:

You are commanded that of the goods and chattels of John Doe you cause to be made the sum of seventy-five dollars, which Richard Roe, late before me, a justice of the peace for said county, recovered against him for debt, with interest thereon from the tenth day of October, 1884, until paid; also, the sum of nine dollars, which was adjudged to said Richard Roe for his costs in that suit expended; and that you have said sums of money within thirty days, to render to the said Richard Roe his debt, interest and costs aforesaid.

Witness my hand, as justice of the peace for said county, this tenth day of January, 1885.

George Swarts, J. P.

No. 39.—*Execution for Specific Property, or its Value.*

[Section 5181.]

The State of Arkansas to the Sheriff of Pulaski County:

You are commanded to take from John Doe, and deliver to Richard Roe, a certain bay horse, seven years old [otherwise describe], if to be had, if not, then that you cause to be made of the estate of said John Doe the sum of two hundred dollars, the value of said horse; also, the sum of fifty dollars in damages, which said Richard Roe, late in our circuit court, recovered against the said John Doe; also, the sum of thirty-two dollars, which was adjudged to the said Richard Roe for his costs in that suit expended; and that you have said sums of money within sixty days, to render to the said Richard Roe his damages and costs aforesaid.

[L. s.] In witness whereof, I have hereunto set my hand and affixed the seal of said court this tenth day of January, 1885.

A. B., Clerk.

NOTE.—When this is issued by a justice of the peace it should be directed, made returnable and attested as in form No. 38; and after the word "late" he should insert the words, "Before me, a justice of the peace of said county."

No. 40.—*Bond of Indemnity to Sheriff before Levy of an Execution.*

[Section 3021.]

C. D., sheriff of Pulaski County, having required a bond of indemnity before he proceeds to levy an execution issued on the first day of December, 1884, from the Pulaski Circuit Court, in favor of Richard Roe,

against John Doe, for the sum of two hundred dollars, upon a bay horse [give other descriptions], we undertake to indemnify the sheriff against damages which he may sustain in consequence of the seizure or sale of the horse under execution; also, to pay to any claimant of the horse the damages which he may sustain in consequence of such seizure or sale, and to warrant to any purchaser of the horse under the execution such estate or interest in the horse as may be sold.

Richard Roe,
John Smith.

January 10, 1885.

Attest: C. D., Sheriff.

No. 41.—Bond to Indemnify Sheriff after the Levy of an Execution.

[Section 3021.]

A. B., sheriff of Pulaski County, having levied an execution, issued on the first day of December, 1884, from the Pulaski Circuit Court, in favor of Richard Roe, against John Doe, for the sum of two hundred dollars, upon a bay horse [here otherwise describe], and having required a bond of indemnity before he proceeds to sell said horse, we undertake, etc. (as in last form).

No. 42.—Bond of Claimant to Suspend Sale under Execution.

[Section 3042.]

The sheriff of Pulaski County having levied an execution, which issued on the first day of December, 1884, from the Pulaski Circuit Court, in favor of Richard Roe, against John Doe, for the sum of two hundred dollars, upon a certain bay horse [otherwise describe], which has been appraised at the sum of one hundred dollars, we undertake that if it shall be adjudged that the horse is subject to the execution, Henry Adams, who claims the horse, will pay to Richard Roe, the plaintiff in this execution, the value of the horse and ten per cent. thereon, not exceeding the amount due on the execution and ten per cent. thereon.

Henry Adams,
James Brown.

January 10, 1885.

Attest: C. D., Sheriff.

No. 43.—Appraisal.

[Section 3043.]

The undersigned, having been appointed and duly sworn as appraisers by the sheriff of Pulaski County, do appraise the horse upon which the sheriff has levied an execution, in favor of Richard Roe, against John Doe, at the sum of one hundred dollars.

Charles Miles,
E. Bacon,
J. Robinson.

No. 44.—Claim of Exempted Personal Property.

[Section 3006.]

County of Franklin, }
White Oak Township. } Before Henry Wilkins, justice of the peace for said township.
Richard Roe, plaintiff, }
against } Schedule.
John Doe, defendant. }

John Doe, the defendant in the above entitled action, states that he is a resident of the State of Arkansas and a married man (or the head of a family); that he is the owner of the following described personal property in addition to his wearing apparel and that of his family, to wit: one bay horse, one black mare, one two-horse wagon, etc. (describing all the defendant's personal property, including moneys, credits, etc.); that an execution has been issued by said justice on the judgment rendered against him in said action, and that he claims as exempt from sale on said process the part of said property specified as follows:

One bay horse of the value of.....	\$100 00
One black mare of the value of.....	100 00
One two-horse wagon of the value of.....	60 00
Two hundred bushels of corn of the value of.....	100 00
One set of harness of the value of.....	20 00
One milk cow of the value of.....	20 00
Twenty hogs of the value of.....	50 00
Twenty sheep of the value of.....	50 00
Total value.....	\$500 00

John Doe.

I, John Doe, do solemnly swear that the above schedule embraces all my personal property of every kind, in addition to my wearing apparel and that of my family, and that the property claimed in said schedule as exempt from execution does not exceed in value the sum of five hundred dollars.

John Doe.

Subscribed and sworn to before me this twentieth day of January, 1885.

Henry Wilkins, J. P.

NOTE.—If the defendant is unmarried and not the head of a family, the form will be: "John Doe, the defendant in the above entitled action, states that he is a resident of the State of Arkansas; that he is the owner, etc.," proceeding as above, but claiming property not exceeding in value the sum of two hundred dollars.

No. 45.—*Supersedeas.*

[Section 3006.]

County of Franklin, }
White Oak Township. } Before Henry Wilkins, justice of the peace for said township.
Richard Roe, plaintiff, }
against } Supersedeas.
John Doe, defendant. }

I, Henry Wilkins, a justice of the peace for White Oak Township, in the County of Franklin, do certify that John Doe, the defendant in the above entitled cause, has this day filed in my office a schedule, verified by affidavit, of all his personal property in which he claims as exempt from sale on the execution issued by me in said cause on the first day of January, 1885, the property described as follows, to wit:

[Insert description of property claimed as described in schedule.]

Wherefore, the said execution is hereby superseded and all proceedings thereunder stayed as to all the said property so claimed in said schedule.

Given under my hand this second day of January, 1885.

Henry Wilkins, J. P.

PROCESS FOR THE ATTENDANCE OF WITNESSES.

No. 46.—*Subpoena in Circuit Court.*

[Section 2873.]

The State of Arkansas to the Sheriff of Pulaski County:

You are commanded to summon John Styles, George Morgan and Richard Burns to appear before the Pulaski Circuit Court, on the fourth day of its next (March) term, which will be on Thursday, the _____ day of March, 1885, and testify, on behalf of the plaintiff, in an action in said court between Richard Roe, plaintiff, and John Doe, defendant.

Witness my hand this tenth day of January, 1885.

A. B., Clerk.

No. 47.—*Subpoena in Justice's Court.*

[Section 2873.]

The State of Arkansas, }
County of _____, } ss.

To the Constable of _____ Township, in _____ County, greeting:

You are hereby commanded to summon _____ to appear before the undersigned, one of the justices of the peace of _____ Township, in the County of _____, on the _____ day of _____, 18—, at ten o'clock in the forenoon, at _____, in said township, then and there to testify in a case pending before said justice, wherein _____ is plaintiff and _____ is defendant, on the part of the _____.

Given under my hand this _____ day of _____, 18—.

_____, J. P.

No. 48.—By a Justice of the Peace Taking Depositions.

[Section 2946.]

The State of Arkansas to any Constable of Pulaski County :

You are commanded to summon John Styles, George Morgan and Robert Burns to appear before me at my office in the City of Little Rock, on the — day of —, 1885, to give their depositions in behalf of the defendant in an action in the Pulaski Circuit Court between Richard Roe, plaintiff, and John Doe, defendant.

Given under my hand this tenth day of January, 1885.

—, J. P.

No. 49.—Warrant for Arrest of Witness from a Circuit Court.

[Section 2887.]

The State of Arkansas to the Sheriff of Pulaski County :

You are commanded to arrest George Morgan and have him before the Pulaski Circuit Court on the fourth day of its next (March) term, which will be on Thursday, the — day of March, 1885, as well to testify in behalf of the plaintiff in an action in said court between Richard Roe, plaintiff, and John Doe, defendant, as to answer for contempt of said court; and you will admit him to give bail for his appearance in the sum of one hundred dollars.

[L. S.] Witness my hand and the seal of said court this tenth day of January, 1885.

A. B., Clerk.

No. 50.—Warrant for Arrest of Witness by a Justice of the Peace Taking Depositions.

[Section 2887.]

The State of Arkansas to any Constable of Pulaski County :

You are commanded to arrest George Morgan and have him before me at my office in Little Rock, on the tenth day of January, 1885, as well to give his deposition in an action in the Pulaski Circuit Court between Richard Roe, plaintiff, and John Doe, defendant, as to answer for contempt; and you will admit him to give bail for his appearance in the sum of one hundred dollars.

Given under my hand this first day of January, 1885.

Thomas Mason, J. P.

NOTE.—If the action is pending before the justice, after the words "as well to," in the third line, insert the words "to testify in behalf of the plaintiff in an action pending before me between," etc., and proceed as in this form.

No. 51.—Bail Bond to be Indorsed on the Warrant of Arrest.

[Section 2887.]

I acknowledge myself bound to the State of Arkansas in the sum of one hundred dollars, as bail for the appearance of George Morgan at the time and place named in the within warrant.

James Shy.

January 1, 1885.

DEPOSITIONS.

No. 52.—Notice to Take Depositions.

[Section 2931.]

Richard Roe, plaintiff, }
 against } In the Circuit Court of Pulaski County.
 John Doe, defendant. }

To John Doe, the above-named defendant:

You are hereby notified that depositions of witnesses to be read in evidence in the above entitled cause on the part of the plaintiff will be taken at —, in the County of — and State of Arkansas, on the third

day of May, 1885, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon; and that the taking of the said depositions, if not completed on that day, will be continued from day to day, at the same place and between the same hours, until completed.

Richard Roe.

NOTE.—Notice to take depositions may be served on the party or his attorney. SEC. 5213. As to the service of other notices required in the progress of an action, see SEC. 5212.

No. 53.—Caption to Deposition.

[Sections 2949-2950.]

The deposition of Timothy P. Kavanaugh, taken on the tenth day of January, 1885, between the hours of 8 o'clock A. M. and 6 o'clock P. M., at the ——— office, in the City of Little Rock, in the County of Pulaski, to be read as evidence in an action between Richard Roe, plaintiff, and John Doe, defendant, pending in the Pulaski Circuit Court.

No. 54.—Certificate of the Officer before whom the Deposition was Taken.

[Sections 2949-2950.]

The State of Arkansas, }
Pulaski County. }

I, Thomas Jones, a justice of the peace within and for Pulaski County, do certify that the foregoing deposition of Timothy P. Kavanaugh was taken before me, and was read to and subscribed by him in my presence at the time and place and in the action mentioned in the caption, the said Kavanaugh having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth and nothing but the truth, and that his statements were reduced to writing by me in his presence (or by him in my presence), the plaintiff alone being present at the examination (or the defendant, or both plaintiff and defendant, or neither party, in person or by attorney, being present at the examination, according to the facts).

Given under my hand this tenth day of January, 1885.

Thomas Jones, J. P.

No. 55.—Commission to Take Depositions upon Interrogatories.

[Section 2944.]

Pulaski Circuit Court.

The State of Arkansas to any officer authorized to take depositions in or out of this state:

Know ye, that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine Samuel Holtzman and Richard Webb as witnesses in a certain suit now pending in the Pulaski Circuit Court, in which John Drees is plaintiff and Edward Nevins is defendant.

Therefore, we desire that you cause the said witnesses to come before you; and, first duly swearing them to testify the whole truth in the premises, that you examine them upon the interrogatories and cross-interrogatories hereto annexed; that you cause said examination to be reduced to writing, either by yourself or by the witnesses in your presence, and to be by them subscribed; and, in taking said depositions, you will permit neither party, nor his agent or attorney, to be present at the examination of the witnesses, unless both parties are present or represented by an agent or attorney, or unless the opposite party, or his agent or attorney, has been seasonably notified of the time and place of taking the depositions, or the party attending has been notified by the opposite party to attend; and when you shall so have taken the same, then that you send the same without delay, duly certified, with the commission, interrogatories and exhibits, closed up under your seal, with an indorsement on the envelope showing them to be depositions, and the style of the case in which they were taken, addressed to the undersigned at Little Rock, in said state.

[L. s.] Witness my hand and the seal of said court this fourth day of May, 1885.

A. B., Clerk.

NOTE.—By consent of parties or by order of the court, a commission to take depositions may be directed to any person. SEC. 2926.

LIENS.—PROCEEDINGS TO ENFORCE.

No. 56.—Affidavit in Justice's Court to Enforce Vendor's Lien on Personal Property.

[Section 4399.]

County of Franklin, }
 White Oak Township. } Before Henry Wilkins, justice of the peace for said township.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that the defendant, John Doe, by his promissory note, dated July 1, 1885, and due one day after date, agreed to pay to the plaintiff one hundred dollars for the price of a bay horse, four years old and about fifteen hands high, which the plaintiff sold and delivered to the defendant on the day said note bears date, and which is of the value of one hundred dollars, and is now in the possession of the defendant, in said county. Said note is herewith filed, and the plaintiff says that no part of the sum specified therein has been paid, and that he has a lien on said horse to secure the payment of said sum, with the interest due thereon. He therefore prays for an order directing the constable to take said horse and hold him subject to the orders of the court, and for judgment for the amount due on said note.

Richard Roe.

Subscribed and sworn to before me January 10, 1885.

Henry Wilkins, J. P.

No. 57.—Summons and Order.

[Section 4399.]

County of Franklin, }
 White Oak Township. } Before Henry Wilkins, justice of the peace for said township.

Richard Roe, plaintiff, }
 against } Summons and Order.
 John Doe, defendant. }

The State of Arkansas to any Constable of Franklin County:

You are commanded to take a bay horse, four years old, about fifteen hands high, and of the value of one hundred dollars, from the possession of the defendant, John Doe, and hold the same subject to the orders of the court in this action; and you are also commanded to summon the said John Doe to appear before me at my office in White Oak Township, in said county, on the — day of January, 1885, to answer the claim of the said plaintiff for debt due upon a promissory note amounting, exclusive of interest, to the sum of one hundred dollars, and his claim of a lien on said horse for the amount of said note; and notify said Doe of the time and place of trial. You will make due return of this summons and the order herein contained, before me on the — day of January, 1885.

Given under my hand this tenth day of January, 1885.

Henry Wilkins, J. P.

No. 58.—Bond of the Defendant to Retain the Property.

[Section 4401.]

County of Franklin, }
 White Oak Township. } Before Henry Wilkins, justice of the peace for said township.

Richard Roe, plaintiff, }
 against } Bond.
 John Doe, defendant. }

We undertake and are bound to the plaintiff, Richard Roe, that the defendant, John Doe, shall perform the judgment of the court in this action.

John Doe,
Thomas Brown.

January 10, 1885.

Attest: John Hudson, Constable.

No. 59.—*Affidavit to Enforce Laborer's Lien.*

[Section 4426.]

County of Franklin,
White Oak Township. } Before Henry Wilkins, justice of the peace for said township.
Richard Roe, plaintiff,
against } Affidavit.
John Doe, defendant. }

The plaintiff, Richard Roe, states that the defendant, John Doe, is justly indebted to him in the sum of one hundred and twenty dollars, for labor performed by the plaintiff for the defendant, in cutting and raking seventy-five tons of hay, which is now in stacks on the farm of the defendant, in said County of Franklin; that the plaintiff has a laborer's lien on said hay to secure the payment of said sum, which is now due; and that said labor was performed within eight months next before this date. Wherefore, the plaintiff prays for an order of attachment against said hay and for judgment for said sum.

Richard Roe.

Subscribed and sworn to before me this tenth day of January, 1885.

Henry Wilkins, J. P.

NOTE.—This affidavit will serve as the complaint in the action. *Emerson v. Hedrick*, 42—263. And the truth of the plaintiff's statement may be put in issue as in cases of attachment. SEC. 4427.

No. 60.—*Attachment and Summons.*

[Sections 4428, 4430.]

County of Franklin,
White Oak Township. } Before Henry Wilkins, justice of the peace for said township.
Richard Roe, plaintiff,
against }
John Doe, defendant. }

The State of Arkansas to any Constable of Franklin County:

You are commanded to attach seventy-five tons of hay, the property of the defendant, John Doe, and now in stacks on his farm, in said county, and hold the same subject to the order and decision of the court in the above entitled action; and you are also commanded to summon the said John Doe to appear before me at my office in White Oak Township, in said county, on the twenty-second day of January, 1885, to answer the claim of the plaintiff, Richard Roe, for debt amounting to one hundred and twenty dollars, due for labor in cutting and raking said hay, as set forth in said plaintiff's affidavit, and to show cause why judgment shall not be rendered against him for said sum, and said hay be sold for the satisfaction thereof; and you will deliver to said defendant a copy of said affidavit, and notify him of the time and place of trial.

You will make due return of this writ, with your proceedings thereon, before me on the day above mentioned.

Given under my hand this tenth day of January, 1885.

Henry Wilkins, J. P.

NOTE.—The summons must be served at least ten days before the trial. SEC. 4428.

No. 61.—*Affidavit to Enforce Landlord's Lien.*

[Sections 4459, 4460.]

County of Franklin,
White Oak Township. } Before Henry Wilkins, justice of the peace for said township.
Richard Roe, plaintiff,
against }
John Doe, defendant. }

The plaintiff, Richard Roe, states that the defendant, John Doe, is justly indebted to him in the sum of two hundred dollars, for rent during the year 1884 of the plaintiff's farm, situated in Franklin County; that said sum was due on the first day of November, 1884, and is payable in money; that said John Doe has produced on said farm during said year a crop of corn and cotton, which is now on said farm, and that the plaintiff has a lien on said crop for said rent.

The said plaintiff further states that said John Doe is about to remove said corn and cotton from said farm without paying said rent (or has removed said corn and cotton, or some portion thereof, from said farm with-

out the plaintiff's consent). Wherefore, he prays for a writ of attachment and for judgment for said sum and costs.

Subscribed and sworn to before me this tenth day of November, 1884.

Richard Roe.

Henry Wilkins, J. P.

NOTE.—If the rent is not due, the time when it will become due should be stated. If there was an agreement to receive a portion of the crop for the rent, its value and the time it became or will become due should be stated.

No. 62.—Bond of Landlord to Obtain Attachment.

[Section 4460.]

County of Franklin, }
White Oak Township, } Before Henry Wilkins, justice of the peace for said township.
Richard Roe, plaintiff, }
against } Bond.
John Doe, defendant. }

We undertake and are bound to the defendant, John Doe, in the sum of four hundred dollars, that the plaintiff, Richard Roe, will prove his debt and the lien claimed in the action entitled above, in a trial at law, or that he will pay such damages as shall be adjudged against him.

November 10, 1884.

Attest: Henry Wilkins, J. P.

Richard Roe,
John Doe.

No. 63.—Attachment to Enforce Landlord's Lien.

[Section 4459.]

County of Franklin, }
White Oak Township, } Before Henry Wilkins, justice of the peace for said township.
Richard Roe, plaintiff, }
against }
John Doe, defendant. }

The State of Arkansas to any Constable of Franklin County:

You are commanded to attach and safely keep the crop of corn and cotton of the defendant, John Doe, produced on the farm of the plaintiff, Richard Roe, in said county, during the year 1884, or so much thereof as will secure and satisfy the debt of two hundred dollars, claimed and sworn to by said plaintiff in the action entitled above, and the costs of said action; and you are also commanded to summon the said John Doe to appear before me at my office in said Township of White Oak, on the twenty-second day of November, 1884, to answer the claim of said plaintiff for said debt and of a lien on said crop for the amount thereof, and notify said Doe of the time and place of trial.

You will make due return of this writ, with your proceedings thereon, before me on the day above mentioned.

Given under my hand this tenth day of November, 1884.

Henry Wilkins, J. P.

PLEADINGS.

No. 64.—Complaint in Ejectment.

[Section 2632.]

In the Circuit Court of Pulaski County.

Richard Roe, plaintiff, }
against } Complaint at Law.
John Doe, defendant. }

Said plaintiff brings this suit against said defendant, and for cause of action he says that he is the owner, in fee simple (or otherwise, as the case may be), of the following lands, lying in said county, and he claims title to them as follows:

1. On the twentieth day of June, 1850, said lands were patented to John Smith by the United States, as will appear by reference to a copy of said patent herewith filed, marked Exhibit "A," and made part hereof.
2. On the twenty-fourth day of March, 1860, said John Smith and his wife, by their deed of that date, duly acknowledged and executed, conveyed said lands to William Robinson, in fee simple, which deed was

filed for record in the recorder's office of said county on the twenty-fifth day of March, 1860, as will be seen by reference to a copy of said deed and the certificates thereto annexed, herewith filed, marked Exhibit "B," and made part hereof.

3. On the third day of September, 1874, said Robinson and his wife, by their deed of that date, conveyed said lands to said plaintiff. Said deed was duly acknowledged by said Robinson and wife, and was filed for record in said recorder's office on the fourth day of September, 1874, as will appear by reference to a copy of said deed and the certificates thereto attached, herewith filed, marked Exhibit "C," and made part hereof.

Said defendant is in the unlawful possession of said land, and has been for two years last past, during all of which time the said plaintiff has had title to said land, and still has, and the right to the possession thereof. And plaintiff says that by reason of the said wrongful possession of said land by said defendant he has sustained damages in the sum of ——— dollars. Wherefore, he prays judgment for the recovery of said lands and for the possession thereof, and for said damages for the unlawful detention of the same.

E. F., attorney for plaintiff.

No. 65.—Affidavit by Plaintiff.

State of Arkansas, Pulaski County.

Richard Roe says that he believes the statements of the foregoing complaint are true.

Richard Roe.

Subscribed and sworn to before me this tenth day of January, 1885.

Henry Wilkins, J. P.

No. 66.—Affidavit of Plaintiff's Agent or Attorney.

State of Arkansas, Pulaski County.

E. F. says that he is the attorney of the plaintiff, Richard Roe, who is now absent from Pulaski County, and that affiant believes the statements of the foregoing complaint are true.

E. F.

Subscribed and sworn to before me this tenth day of January, 1885.

Henry Wilkins, J. P.

NOTE.—Where both parties claim under the same person, neither is required to trace his title beyond the common source. *Safford v. Watson*, 41—17.

No. 67.—Answer and Exceptions.

[Sections 2632, 2633.]

In the Circuit Court of Pulaski County.

Richard Roe, plaintiff,	} Answer.
against	
John Doe, defendant.	

Comes said defendant, and for answer to said complaint he says:

I.

That it is not true that he is or has been in the unlawful possession of said lands, as stated in said complaint; but he says that he is the owner thereof, and, as such, is entitled to such possession; and he claims title to said lands under the following documentary evidence:

1. On the twenty-fourth day of April, 1865, said John Smith and his wife conveyed said lands, by their mortgage of that date, duly acknowledged and executed, to William Jones, for the purpose of securing the payment of a debt of one thousand dollars due from said Smith to said Jones, which mortgage was filed for record in the recorder's office of said county on the twenty-sixth day of April, 1865, as will be seen by reference to a copy thereof and the certificates thereto annexed, filed herewith, marked Exhibit "A," and made part hereof.

2. On the twenty-fourth day of June, 1866, said Jones filed his complaint on the chancery side of this court, setting up the execution of said mortgage, and that said debt remained unpaid, and praying for a decree for its foreclosure, in which cause said Smith was duly impleaded; and such further proceedings were had in said cause that, on the third day of October, 1867, it was decreed by this court that said lands should be sold by Richard Williams, a commissioner appointed by the court. Said lands were accordingly sold by said commissioner, and they were bought by this defendant. Said commissioner reported said sale to this court, and his report was approved on the twenty-ninth day of December, 1867, all of which will be seen by reference to a copy of said proceedings and decree, herewith filed, marked Exhibit "B," and made part hereof.

3. Said Commissioner Williams, acting under said decree, executed a deed to this defendant, dated on the thirtieth day of January, 1868, which deed was duly acknowledged and delivered, and was approved by said

court on the day of its date, and was filed for record in said recorder's office on the first day of February, 1888, as will be seen by a copy of said deed and accompanying certificates, herewith filed, marked Exhibit "B," and made part hereof.

And said defendant says that, under said proceedings and conveyances, he has a title to said lands, in fee simple, and the right to the possession thereof.

II.

And for a further defense said defendant says that the plaintiff's cause of action has not accrued at any time within seven years next before the commencement of this suit.

EXCEPTIONS.

1. The defendant excepts to the admissibility in evidence of the deed from John Smith and wife to William Robinson, a copy of which is filed with said complaint as Exhibit "B" thereto, because he says that the certificate of acknowledgment thereto is insufficient, for that it omits the statutory words, "for the consideration."

2. Defendant also excepts to the admissibility in evidence of the deed from Robinson and wife to the plaintiff, marked Exhibit "C" to said complaint, because he says that the seal of the notary public, before whom said acknowledgment purports to have been taken, is not annexed to the certificate.

G. H., attorney for defendant.

[Affidavit by defendant, or his agent or attorney, of similar form and import with that of the plaintiff.]

NOTE.—Where limitation is pleaded, even a void deed may be read by way of showing a color of title. *Jacks v. Chaffin*, 34—534; *Logan v. Jells*, *Ib.*, 547.

No. 68.—*Complaint in Replevin.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
against } Complaint at Law.
John Doe, defendant. }

The plaintiff, Richard Roe, states that he is the owner and entitled to the possession of a bay horse, about sixteen hands high, four years old, and of the value of one hundred and fifty dollars, of which the defendant, John Doe, has possession without right, and has unlawfully detained from the plaintiff for three months past.

Therefore, he prays judgment for the recovery of the horse and one hundred dollars damages for his detention, and for other relief.

H. B., attorney for plaintiff.

[Affidavit.]

No. 69.—*Answer.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
against } Answer.
John Doe, defendant. }

The defendant, John Doe, admits that he has possession of the horse of the plaintiff in the complaint mentioned, and holds him, as he has right to do; for he says that he is an inn-keeper, and the horse was brought to his inn by a traveler, and the defendant required to feed and take care of the horse, which he did, and his reasonable and lawful charges for such feeding and taking care remain unpaid, and he holds and detains the horse by reason of his lien for said charges.

John Doe.

[Affidavit.]

No. 70.—*Action on a Note by the Indorsee against Maker and Indorsers.*

Pulaski Circuit Court.

Richard Roe, Plaintiff, }
against } Complaint at Law.
John Doe, }
John Smith, }
Wm. Brown, defendants. }

The plaintiff, Richard Roe, states that the defendant, John Doe, by his promissory note, dated the tenth day of January, 1884, agreed to pay to the defendant, John Smith, four hundred dollars, six months thereafter;

and that on the first day of February, 1884, the said defendant, John Smith, indorsed and delivered said note to the said defendant, William Brown, who, on the first day of May, 1884, indorsed and delivered the said note to the plaintiff.

On the day the said note became due, no part of it was paid, although then presented to the said defendant, John Doe, for payment (and protested), of all which the said defendants, John Smith and William Brown, had then due notice.

A copy of said note, with the indorsements thereon, is herewith filed and made part of this complaint. No part of said note has been paid; wherefore, plaintiff prays judgment for his debt, interest and costs of protest, and for other relief.

[Affidavit.]

J. N., attorney for plaintiff.

No. 71.—*An Action on a Note or Bond.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Complaint at Law.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that the defendant, John Doe, by his promissory note, dated the tenth day of January, 1884, agreed to pay to the plaintiff four hundred dollars, six months thereafter, which note being lost, neither the original nor a copy thereof can be filed herewith. No part of said debt has been paid; wherefore, he prays judgment for his debt, and for other relief.

[Affidavit.]

H. B., attorney for plaintiff.

No. 72.—*Answer.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Answer.
 John Doe, defendant. }

The defendant, John Doe, admits that he owes the debt in the complaint mentioned, but he states that the plaintiff is indebted to him in the sum of four hundred and twenty dollars, for twenty-one cattle sold and delivered by him to the plaintiff, at the price of twenty dollars per head, which debt remains unpaid; wherefore, he prays judgment for the set-off of his debt against the debt in the complaint mentioned, and for judgment for the remainder of his debt, and for other relief.

[Affidavit.]

John Doe.

No. 73.—*Reply.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Reply.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that he paid to the defendant the full price of the cattle mentioned in the answer.

[Affidavit.]

Richard Roe.

No. 74.—*Accord and Satisfaction.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Answer.
 John Doe, defendant. }

The defendant, John Doe, answering, says he admits the execution of the note, and that before the commencement of this action he delivered to the plaintiff one wagon, which he received in full satisfaction of the note mentioned in plaintiff's complaint.

[Affidavit.]

J. M., attorney for defendant.

No. 75.—*Action on Assigned Account for Goods Sold—Assignee against Debtor and Assignor.*

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe and John Smith, defendants. } Complaint at Law.

The plaintiff, Richard Roe, states that the defendant, John Doe, owed the defendant, John Smith, one thousand dollars for goods sold and delivered by said defendant, Smith, to said defendant, Doe, the particulars of which, and also the credits thereon, will appear by the account herewith filed, and made part of this complaint.

Plaintiff says that said defendant, Smith, on the tenth day of May, 1884, assigned (in writing) said account to plaintiff, which assignment is herewith filed, and also made part of this complaint. Plaintiff, therefore, prays judgment against the said defendant, Doe, for five hundred dollars, being the balance due him on said account, and for other relief.

G. E., attorney for plaintiff.

[Affidavit.]

NOTE.—The assignee of a chose in action, not assignable by statute, is, under the Code, the "real party in interest," and is the proper party plaintiff, whether the assignment was in writing or by parol. In such cases, the Code provides the assignor "must be a party as plaintiff or defendant." Notwithstanding this latter provision, the assignor of a demand not assignable by statute may be dispensed with as a party, where, by his deposition or otherwise, he admits the fact of his assignment, and disclaims any further interest in the controversy; and, where the assignment is absolute and unconditional, the assignor is not an indispensable party in any case where the defect is not insisted on by demurrer or by answer. *Colyer's adm. v. Craig*, 11 Ben. Mon., 73; *Johnson v. Rankin*, 3 Bibb., 87; *Kellar's exr. v. Beeler*, 5 Mon., 574; *Du Vall v. Waggener*, 2 Ben. Mon., 184; *Newman's Pleading and Practice*, pp. 182, 214; and see *Swan's Pleading and Practice*, 102, and note (c), and 1 *Nash's Pleading and Practice*, pp. 30-43.

No. 76.—*An Action on a Merchant's Account.*

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Complaint at Law.

The plaintiff, Richard Roe, states that the defendant, John Doe, is indebted to him in the sum of one hundred and twenty-five dollars and thirty-seven cents, for goods and merchandise sold and delivered by the plaintiff to the defendant, particulars of which are set out in an account filed herewith, together with the credits to which the defendant is entitled, and leaving due and unpaid the sum above mentioned; wherefore, he prays judgment for one hundred and twenty-five dollars and thirty-seven cents, and for other relief.

H. B., attorney for plaintiff.

[Affidavit.]

No. 77.—*Answer.*

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Answer.

The defendant, John Doe, admits the correctness of the plaintiff's account in regard to the amount and prices of the goods sold and delivered; but he states that the credit on said account of one hundred and fifty dollars, for one hundred cords of wood delivered by defendant to plaintiff in part payment thereof, is too small. The wood was delivered to and received by the plaintiff at the current price of wood, which was two dollars per cord, and the credit should have been two hundred dollars, instead of one hundred and fifty dollars.

John Doe.

[Affidavit.]

NOTE.—On this answer the plaintiff is entitled to judgment for seventy-five dollars and thirty-seven cents, and the controversy is only for the remaining fifty dollars. SEC. 5176.

No. 78.—Statute of Limitations to an Account, etc.

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Answer.

The defendant, John Doe, answering, says that the cause of action mentioned in the plaintiff's complaint did not accrue within three years next before the commencement of this action.

[Affidavit.]

J. M., attorney for defendant.

No. 79.—Action on a Contract for the Delivery of Personal Property.

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Complaint at Law.

The plaintiff, Richard Roe, states that on the tenth day of September, 1884, he made a contract with the defendant, John Doe, by which the defendant agreed to deliver to the plaintiff, at his storehouse, in the City of Little Rock, on or before the first day of January, 1885, fifty bales of cotton, to weigh at least twenty-two thousand five hundred pounds, for which the plaintiff agreed to pay him eighteen cents per pound on delivery, and that the defendant has not delivered said cotton, or any part thereof. He also states that the current market price of cotton, at Little Rock, on the first day of January, 1885, was twenty cents per pound; wherefore, he prays judgment for one thousand dollars, and other proper relief.

[Affidavit.]

J. D., attorney for plaintiff.

No. 80.—Action for Money Paid by Surety.

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Complaint at Law.

The plaintiff, Richard Roe, states that on the first day of July, 1884, he paid to John Smith one hundred and sixteen dollars in discharge of a note held by said Smith on the defendant, John Doe, and this plaintiff; and that plaintiff was security for said defendant in said note, which note was dated July 1, 1883, and due twelve months after date, for said sum of one hundred and sixteen dollars. Said note is herewith filed. The defendant has failed to pay plaintiff said sum of money, or any part thereof; wherefore, he prays judgment for one hundred and sixteen dollars, and interest and costs, and all other proper relief.

[Affidavit.]

J. D., attorney for plaintiff.

No. 81.—Answer.

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Answer.

The defendant, John Doe, admits that the plaintiff was his surety on the note held by John Smith, in the complaint mentioned; but before it was paid, the plaintiff, in consideration of a horse delivered to him by the defendant, agreed to satisfy and pay the amount due on said note.

[Affidavit.]

D. O., attorney for defendant.

No. 82.—Action against Common Carrier.

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Complaint at Law.

The plaintiff, Richard Roe, states that on the second day of June, 1884, H. J. Galpin, at the City of Memphis, delivered to the defendant, John Doe, who was then a common carrier, a crate containing about five hundred

pieces of china ware, then in good order, belonging to the plaintiff, to be carried from Memphis to the City of Little Rock, and there safely deliver to the plaintiff, for which the defendant was to receive as a reward one dollar for each one hundred pounds the crate should weigh. A bill of lading, showing said facts, signed by the defendant, is herewith filed. The plaintiff states that the defendant did not safely deliver said crate and contents to the plaintiff, but, by his negligence in carrying them, three hundred pieces of the said china ware, of the value of one hundred dollars, were broken and rendered worthless.

Wherefore, etc.

[Affidavit.]

No. 83.—*Answer.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
against } Answer.
John Doe, defendant. }

The defendant, John Doe, admits that the crate of china was delivered to him as stated in the complaint; but he says that its contents were badly and negligently packed, and all the breakage mentioned in the complaint was caused by the bad packing, and not by the neglect or fault of the defendant.

John Doe.

[Affidavit.]

No. 84.—*Action for Assault and Battery.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
against } Complaint at Law.
John Doe, defendant. }

The plaintiff, Richard Roe, states that on the fourth day of July, 1884, the defendant, John Doe, unlawfully assaulted, beat and bruised him; wherefore, he prays judgment for one thousand dollars, and all proper relief.

Richard Roe.

[Affidavit.]

No. 85.—*Answer.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
against } Answer.
John Doe, defendant. }

The defendant, John Doe, states that the plaintiff made a violent assault upon him, and the defendant, to defend himself therefrom, did assault, beat and bruise the plaintiff, using no more force than was necessary for his defense, which is the same assaulting, beating and bruising mentioned in the complaint.

C. H., attorney for defendant.

[Affidavit.]

No. 86.—*An Action for Slander.*

Pulaski Circuit Court.

Richard Roe, plaintiff, }
against } Complaint at Law.
John Doe, defendant. }

The plaintiff, Richard Roe, states that he was sworn as a witness and testified on the trial of an action in the Pulaski Circuit Court between David Oliphant, plaintiff, and Thomas Story, defendant, and afterward, about the third day of August, 1884, the defendant, John Doe, in the presence of divers persons, spoke concerning the plaintiff and his said testimony these slanderous words: "He swore a lie on the trial of the suit of Oliphant against Story," thereby meaning that the plaintiff had committed the crime of perjury in his testimony on the trial of said action.

Wherefore, he prays judgment for the sum of five thousand dollars damages, and for other proper relief.

Richard Roe.

[Affidavit.]

No. 87.—An Action for Deceit in the Sale of a Horse.

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Complaint at Law.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that about the tenth day of August, 1883, he purchased of the defendant, John Doe, a horse, at the price of one hundred dollars, then in hand paid to him, the defendant, on said purchase, fraudulently representing the horse to be sound, when he knew the horse to be unsound and diseased with the fistula; that by reason of said unsoundness the horse has become worthless, and plaintiff has been put to expense in keeping and trying to cure him.

Wherefore, he prays judgment for one hundred and fifty dollars, and other proper relief.

J. S., attorney for plaintiff.

[Affidavit.]

No. 88.—Answer.

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Answer.
 John Doe, defendant. }

The defendant, John Doe, admits that he represented the horse sold to the plaintiff to be sound, and he says he did believe said horse was sound at the time of the sale.

J. R., attorney for defendant.

[Affidavit.]

No. 89.—Action for Work Done and Materials Provided and Money Lent.

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Complaint at Law.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that defendant, John Doe, owes him — dollars for work done and materials found by plaintiff for defendant; also, that defendant owes plaintiff — dollars for money lent by plaintiff to him; the particulars of all which will appear by an account herewith filed, together with the credits to which the defendant is entitled, and leaving due and unpaid the sum above mentioned.

Wherefore, he prays judgment for said sum of — dollars, and for other relief.

J. N., attorney for plaintiff.

[Affidavit.]

No. 90.—Action on Agreement for Rent.

Pulaski Circuit Court.

Richard Roe, plaintiff, }
 against } Complaint at Law.
 John Doe, defendant. }

The plaintiff, Richard Roe, states that on the — day of —, 18—, he rented to the defendant, John Doe, by a written agreement, herewith filed (original or copy), a — known as (describe premises) for the term of one year, commencing on the — day of —, 18—, at the yearly rent of six hundred dollars, payable quarter-yearly in advance, which said sum defendant agreed to pay; that defendant thereupon entered and occupied said premises, but has not paid the rent for the last two quarters of said year, amounting to three hundred dollars, and the interest thereon, for which sum and interest plaintiff asks judgment.

J. N., attorney for plaintiff.

[Affidavit.]

NOTE.—In all suits before a justice of the peace, in which it may be necessary to state in writing the cause of action or ground of defense, the forms given in Nos. 79, 82 and 83 will assist the pleader, and may be used in similar cases within a justice's jurisdiction by merely changing the style of the court, etc.

FORMS IN EQUITABLE PROCEEDINGS.

No. 91.—*Action on a Mortgage.*

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, defendant. } Complaint in Equity.

The plaintiff, Richard Roe, states that on the — day of —, 18—, the defendant, John Doe, executed and delivered to plaintiff a note, herewith filed (original or copy), whereby he promised to pay plaintiff — dollars — months after the date thereof; and that on the day and year last aforesaid defendant, for the purpose of securing the payment of said note, executed and delivered to plaintiff a mortgage deed, which is herewith filed, conveying to the plaintiff (here describe the property as described in the mortgage), upon the following conditions, to wit: (here copy the conditions). Plaintiff avers that defendant has failed to perform the said conditions on his part, and that said sum of — dollars, and all interest due thereon, remain unpaid.

Wherefore, he prays judgment may be rendered for the debt and all interest, and that the equity of redemption of the said defendant in and to said property, above described, may be foreclosed, and that the same, or so much thereof as may be necessary, be sold to pay off such judgment, and for other proper relief.

J. N., attorney for plaintiff.

[Affidavit.]

No. 92.—*Action to Set Aside Fraudulent Deed.*

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe, John Knox and Thomas
 Fox, defendants. } Complaint in Equity.

The plaintiff, Richard Roe, states that on the fifteenth day of June, 1884, Thomas Fox executed a deed of trust to defendant, John Knox, as trustee, pretendedly for the purpose of securing the defendant, John Doe, in the payment of a debt, recited in that deed to be two thousand dollars. Said deed embraced all the property of the said Thomas Fox liable to execution, to wit: One house and lot in the City of — (here describe it), and one pair of horses and seven head of cattle.

The plaintiff states that the deed of trust was made and contrived to delay and defraud the creditors of the said Thomas Fox in the collection of their debts; that said Fox only owed said John Doe a small debt, not exceeding two hundred dollars, and, for the fraudulent purpose aforesaid, it was recited in said deed of trust as two thousand dollars; and the said Doe, who is the father-in-law of the said Fox, agreed to hold the property secretly for the benefit of Fox's wife and family.

Plaintiff states that at the September term of the circuit court he recovered a judgment against the defendant, Thomas Fox, for one thousand dollars, with interest thereon at the rate of six per cent. per annum from the twenty-fifth day of December until paid, and thirty-seven dollars costs, which judgment remains in full force; that on the twentieth day of January an execution was issued upon said judgment, directed to the sheriff of said county, it being the county of the residence of the said Fox, commanding him to collect said judgment, which execution was regular and valid, and was, on the twentieth day of March, returned by said sheriff, with a return indorsed thereon in substance that the said Thomas Fox had no property in said county out of which said execution, or any part thereof, could be made, and the plaintiff avers that the said Thomas Fox has no property other than that embraced in said deed of trust out of which plaintiff's judgment can be collected.

Wherefore, he prays that said deed of trust be canceled and set aside, and that said property be subjected to the payment of plaintiff's judgment, and for all other proper relief.

T. P., attorney for plaintiff.

[Affidavit.]

No. 93.—*Answer.*

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
 John Doe and others, defendants. } Answer.

The defendants, John Doe, John Knox and Thomas Fox, for answer, admit the judgment as stated in the complaint, and admit that the execution therein mentioned was issued and returned as therein stated. They also admit that said Thomas Fox executed the deed of trust, but deny that it was made to delay or defraud his creditors; but they aver that it was made in good faith for the purpose of securing the payment of a debt due by said Fox to the said John Doe, and for no other purpose; that said debt is just, and

amounts to the sum stated in said deed of trust; they admit that John Doe is the father-in-law of said Fox, but deny that he agreed to hold the property embraced in the deed of trust, or any part of it, for the benefit of the wife or children of said Fox, or that there was any understanding to that effect.

W. I., attorney for defendants.

[Affidavit.]

No. 94.—Action to Dissolve and Settle a Partnership.

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
John Doe, defendant. } Complaint in Equity.

The plaintiff, Richard Roe, states that on the first day of January, 1886, he formed a partnership with the defendant, John Doe, under the style of Richard Roe & Co., in the business of buying and selling merchandise in the City of Little Rock. By the terms of the partnership, each was to put in an equal amount of capital and share equally in the profits, losses and labors of the business, and the firm was to continue five years, unless sooner dissolved by consent. The partnership has continued nearly two years, during which time the firm has done a large business. Since the commencement of the partnership the defendant has formed habits of intemperance, which wholly disqualify him as a manager or partner of a mercantile concern. These habits are now confirmed, and render the continuance of the connection hazardous to the plaintiff; yet the defendant will not consent to a dissolution and settlement of the firm.

Wherefore, he prays judgment for the dissolution of the partnership, for the settlement of the business and accounts of the firm, for the division of the assets that may remain after the payment of the firm debts, and for other proper relief.

Richard Roe.

[Affidavit.]

No. 95.—Answer.

Pulaski Circuit Court.

Richard Roe, plaintiff,
 against
John Doe, defendant. } Answer.

The defendant, John Doe, consents to the dissolution of the partnership in the complaint mentioned, and unites in the prayer of the plaintiff for the settlement of the business and accounts of the firm, and for the division of the assets that may remain after the payment of the firm debts, and for whatever else is proper.

John Doe.

[Affidavit.]

ORDERS IN COURT.

No. 96.—Judgments in Proceedings at Law, by Default, in an Action on a Note.

Richard Roe, plaintiff,
 against
John Doe, defendant. } Judgment.

The defendant having been duly summoned, and failing to answer, it is adjudged by the court that the plaintiff recover of the defendant eight hundred and twenty-seven dollars, the amount of the note sued on, and interest thereon, with ten per cent. interest per annum thereon from this date until paid, and his costs herein expended.

No. 97.—Where Answer Filed, and Verdict for Plaintiff.

Richard Roe, plaintiff,
 against
John Doe, defendant. } Judgment.

The parties appeared by their attorneys, and the defendant filed his answer to the plaintiff's complaint, and thereupon the following jurors: Harold J. Galpin, T. J. Jamieson, J. M. C. Lehman, Joseph Newton,

W. I. Whitwell, Stephen Lee, Thomas Story, David Oliphant, R. W. Webb, John Dale, Thomas Clements and John Smith, who had previously been sworn as required by law, were impaneled to try the issue, and, having heard the evidence, rendered the following verdict:

"We, of the jury, find for the plaintiff three hundred and eleven dollars:

"Harold J. Galpin, foreman."

It is therefore adjudged by the court that the plaintiff recover of the defendant three hundred and eleven dollars, and his costs herein expended.

No. 98.—Demurrer to Complaint and Judgment in Bar.

Richard Roe, plaintiff, }
 against } Judgment.
 John Doe, defendant. }

The parties appeared by their attorneys, and the defendant filed a demurrer to the complaint, and the questions of law arising thereon being heard, it is adjudged by the court that the complaint is insufficient, and the plaintiff refusing to plead further, it is adjudged that the complaint be dismissed, and that the defendant recover of the plaintiff his costs herein expended.

No. 99.—Demurrer Overruled—Answer Filed—Verdict and Judgment.

Richard Roe, plaintiff, }
 against } Judgment.
 John Doe, defendant. }

The parties appeared by their attorneys, and the defendant filed a demurrer to the complaint, and the questions of law arising thereon being heard, it is adjudged by the court that the complaint is sufficient. The defendant then filed an answer to the complaint, and thereupon the following jurors: Harold J. Galpin, T. J. Jamieson, J. M. C. Lehman, Joseph Newton, W. I. Whitwell, Stephen Lee, Thomas Story, David Oliphant, R. W. Webb, John Dale, Thomas Clements and John Smith, who had previously been sworn according to law, were impaneled to try the issue, and, having heard the evidence, rendered the following verdict:

"We, of the jury, find for the plaintiff one hundred and fifty dollars.

"Harold J. Galpin, foreman."

It is therefore adjudged by the court that the plaintiff recover of the defendant one hundred and fifty dollars, and his costs herein expended.

No. 100.—Judgment for Defendant on Counter-claim or Set-off.

[Section 5180.]

Richard Roe, plaintiff, }
 against } Judgment.
 John Doe, defendant. }

The parties appeared by their attorneys, and the defendant filed his answer, to which the plaintiff filed a reply, and thereupon the following jurors: Harold J. Galpin, T. J. Jamieson, J. M. C. Lehman, Joseph Newton, W. I. Whitwell, Stephen Lee, Thomas Story, David Oliphant, R. W. Webb, John Dale, Thomas Clements and John Smith, who had previously been sworn according to law, were impaneled to try the issue (or issues), and, having heard the evidence, rendered the following verdict:

"We, of the jury, find for the defendant four hundred and seventy-five dollars.

"Harold J. Galpin, foreman."

It is therefore adjudged by the court that the defendant recover of the plaintiff four hundred and seventy-five dollars, and his costs herein expended.

No. 101.—Judgment for Personal Property.

[Section 5181.]

Richard Roe, plaintiff, }
 against } Judgment.
 John Doe, defendant. }

The parties appeared by their attorneys, and the following jurors: Harold J. Galpin, T. J. Jamieson, J. M. C. Lehman, Joseph Newton, W. I. Whitwell, Stephen Lee, Thomas Story, David Oliphant, R. W. Webb,

John Dale, Thomas Clements and John Smith, having previously been sworn as required by law, were impaneled to try the issue (or issues), and, having heard the evidence, rendered the following verdict:

"We, of the jury, find for the plaintiff the bay horse mentioned in the complaint, of the value of two hundred and twenty-five dollars; also, one hundred dollars damages for his detention.

"Harold J. Galpin, foreman."

It is therefore adjudged by the court that the plaintiff recover of the defendant the bay horse mentioned in the complaint, if to be had; if not, two hundred and twenty-five dollars, his value, and one hundred dollars damages for his detention; also, his costs herein expended.

No. 102.—Order Granting an Appeal.

[Sections 1266-1268.]

Richard Roe, plaintiff, }
 against } Appeal.
 John Doe, defendant. }

On motion of John Doe, defendant, an appeal to the supreme court is granted to him from the judgment entered herein at the present term of this court.

APPEALS.

No. 103.—Supersedeas Bond.

[Section 1295.]

Richard Roe, appellant, }
 against } Supersedeas Bond.
 John Doe, appellee. }

Whereas, the appellant, Richard Roe, has taken (or is about to take) an appeal from the judgment of the Pulaski Circuit Court, rendered at its September term, 1884, against him in favor of the appellee, John Doe, for the sum of four hundred dollars, with costs, and the appellant desires to supersede said judgment, now, Henry G. Farrar and Edward P. Kreigh, sureties, hereby covenant with the said appellee that the said appellant will pay to the appellee all costs and damages that may be adjudged against the appellant on the appeal, and also that he will satisfy and perform said judgment in case it shall be affirmed, and any judgment or order which the supreme court may render, or order to be rendered by the inferior court, not exceeding in amount or value the judgment aforesaid (and also pay all rents or damages which, during the pendency of the appeal, may accrue on any part of the property of which the appellee is kept out of possession by reason of the appeal).

[L. s.] Witness our hands this tenth day of January, 1885.

Henry G. Farrar,
 Edward P. Kreigh.

Approved: William Mill, Clerk.

No. 104.—Supersedeas.

[Sections 1294-1296.]

Pulaski Circuit Court.

Richard Roe, appellant, }
 against } Supersedeas.
 John Doe, appellee. }

I hereby certify that an appeal has been granted to the supreme court from the judgment rendered in this court at its September term, 1884, in favor of the appellee, John Doe, against the appellant, Richard Roe, for four hundred dollars, and that a supersedeas bond has been executed within thirty days after the appeal was granted. Therefore, the appellee and all others are commanded to stay proceedings on said judgment.

[L. s.] Witness my hand and the seal of said court this tenth day of January, 1885.

William Mill, Clerk.

APPEALS FROM JUSTICES' COURTS IN CIVIL CASES.

No. 105.—Affidavit for Appeal.

[Section 4135.]

County of Franklin, }
 White Oak Township. } Before Henry Wilkins, justice of the peace for said township.

Richard Roe, plaintiff, }
 against } Affidavit.
 John Doe, defendant. }

I, John Doe, defendant in the above entitled cause, do solemnly swear that the appeal taken by me from the judgment therein rendered is not taken for the purpose of delay, but that justice may be done me.

John Doe.

Subscribed and sworn to before me this twenty-second day of January, 1885.

Henry Wilkins, J. P.

No. 106.—Bond on Appeal.

[Section 4135.]

We, the undersigned, Joseph Newton and J. M. C. Lehman, acknowledge ourselves indebted to George Swartz in the sum of two hundred dollars, to be void upon this condition: Whereas, H. J. Galpin has appealed from the judgment of T. J. Jamieson, a justice of the peace in and for the Township of Big Rock, in the County of Pulaski, in an action between H. J. Galpin, plaintiff, and George Swartz, defendant, now, if said H. J. Galpin will prosecute his appeal with due diligence to a decision, and if, on such appeal, the judgment of the justice be affirmed, or if, on the trial anew in the circuit court, judgment be given against the appellant, he shall satisfy the judgment, or if his appeal be dismissed, he shall pay the judgment of the justice, together with the costs of the appeal, this bond shall be void.

Joseph Newton,
 J. M. C. Lehman.

Attest: T. J. Jamieson, J. P.

No. 107.—Notice of Appeal, where Appeal not Allowed on Same Day on which the Judgment was Rendered.

[Section 4148.]

Richard Roe, plaintiff, }
 against } Before James E. Fitzgerald, J. P.
 John Doe, defendant. }

You are hereby notified that I have taken an appeal from the judgment of the justice in the above entitled cause to the circuit court of the County of White.

John Doe, appellant.

Dated this fourth day of May, 1884.

No. 108.—Certificate when Appeal has been Allowed after Execution has Issued.

[Section 4137.]

State of Arkansas, }
 County of Pulaski, }
 Township of Big Rock. }

I, T. J. Jamieson, a justice of the peace in and for the township aforesaid, do certify that an appeal has been allowed from a judgment rendered by me in a cause wherein H. J. Galpin is plaintiff and George Swartz is defendant.

Given under my hand this tenth day of May, 1884.

T. J. Jamieson, J. P.

No. 109.—*Certificate to be Annexed to all Transcripts Filed in Circuit Court upon Appeal.*

[Section 4139.]

State of Arkansas,
County of Pulaski,
Township of Big Rock. }

Richard Roe, plaintiff,
against
John Doe, defendant. } Justice's Court, Big Rock Township.

[Here copy the entries from the docket.]

I, John Walker, a justice of the peace within and for the Township of Big Rock, in said county, do hereby certify that the foregoing is a true, complete and perfect transcript from my docket of the proceedings and judgment in the above case, together with all the process and all the papers relating to said suit.

Given under my hand this fourth day of May, 1884.

John Walker, J. P.

No. 110.—*Certificate to Transcript of Judgment to be Filed in Clerk's Office.*

[Sections 4100, 4101.]

State of Arkansas,
County of Pulaski,
Township of Big Rock. }

John Drees, plaintiff,
against
John Doe, defendant. }

[Here copy the entries upon the docket, including the judgment.]

I, Henry Wilkins, a justice of the peace within and for the Township of Big Rock, in the County of Pulaski, do hereby certify that the foregoing is a true, complete and perfect transcript of the entries upon my docket, including the judgment rendered by me on the second day of July, 1883, in a case wherein John Drees was plaintiff and John Doe was defendant. And I further certify that on the twelfth day of July, 1883, an execution was issued upon said judgment, directed to the constable of Big Rock Township, and on the twelfth day of August, 1883, returned and indorsed by said constable that the defendant had no goods or chattels whereof to levy the same (or, whereof to levy ——— dollars of the same, which remain unpaid).

Given under my hand this seventh day of September, 1884.

Henry Wilkins, J. P.

No. 111.—*Notice to Plaintiff when Judgment has been Set Aside in Justice's Court.*

[Sections 4070, 4071.]

James M. Butler, plaintiff,
against
Frank M. Sarchett, defendant. } Before Wm. Purcell, J. P.
To James M. Butler:

You are hereby notified that, on motion of Frank M. Sarchett, the above-named defendant, the judgment by default, in the above entitled cause, has been set aside and a new trial granted; and that the time fixed for the trial thereof is the ——— day of ——— next, at my office, in the Township of Big Rock, in the County of Pulaski, when and where you may attend, if you think proper.

Wm. Purcell, J. P.

DOCKET ENTRIES IN JUSTICES' COURTS.

ORDINARY CIVIL CASES.

No. 112.—*Suit on an Account.*

Joseph Newton, plaintiff,
against
Jenks Brantley, defendant. }

On the seventh day of May, 1884, Joseph Newton having filed before me an account and bill of particulars against the defendant, Jenks Brantley, for the sum of two hundred and fifty dollars, a summons thereupon issued, directed to the constable of Big Rock Township, returnable on the twenty-fifth day of May, 1884.

No. 118.—Execution.

On the twelfth day of June, 1884, no stay or appeal being prayed, execution issued, directed and delivered to H. J. Galpin, constable of Big Rock Township, returnable on the twelfth day of July, 1884, indorsed:

William Quarles, debt, \$——.
 William Quarles, damages, \$——.
 Hiram Ming, J. P., costs, \$——.
 H. J. Galpin, constable, costs, \$——.
 John McGovern, witness, \$——.

No. 119.—Stay of Execution.

[Sections 4088-4091, 4098.]

On the fifteenth day of June, 1884, came the said defendant, and prayed a stay of execution for the term of —— months, and offered Elmore Y. Rhone as his security, who entered into an obligation to the plaintiff, dated this day, as required by law; whereupon said stay is granted and said execution revoked, and a certificate to that effect is made and delivered by me to the defendant.

No. 120.—Execution against Defendant and Surety on Stay Obligation.

[Section 4095.]

On the third day of October, 1884, execution issued against the defendant and said Elmore Y. Rhone, directed and delivered to H. J. Galpin, constable, returnable on the third day of November, 1884, indorsed, etc.

No. 121.—Return of Execution by Consent of Plaintiff.

On the third day of November, 1884, the constable returned the execution unsatisfied, by order of the plaintiff.

No. 122.—Renewal of Execution by Indorsement.

[Sections 4111-4113.]

On the third day of November, 1884, the execution was renewed for twelve months, by an indorsement thereon to that effect.

No. 123.—Execution Re-issued.

[Section 4112.]

On the third day of January, 1885, the execution is re-issued, and placed in the hands of H. J. Galpin, constable.

No. 124.—Return of Execution Satisfied.

[Section 4116.]

On the third day of February, 1885, the constable returned the execution satisfied in full.

No. 125.—Trial by Jury.

[Section 4073.]

On this —— day of ——, 18—, it being the day to which this cause was adjourned, both parties again appeared, and, on motion, it is ordered that a jury come; whereupon a jury of six good and lawful men of

the county, to wit: Henry Adams, John Den, John Farquhar, Nicholas Welch, William McEvoy and John Halloran, who being duly sworn according to law, after having heard the evidence, returned the following verdict, to wit: "We, the jury, find for the plaintiff ——— dollars. (Signed.) Henry Adams, foreman."

It is therefore considered that the said plaintiff recover of the said defendant the sum of ——— dollars, so found by the jury aforesaid, together with all his costs in this suit expended.

No. 125.—Appeal.

[Section 4137.]

On this ——— day of ———, 18—, the said defendant filed the affidavit required by law to obtain an appeal, and thereon prayed an appeal to the Circuit Court of Yell County, and the said defendant and Samuel G. Prince, his security, entered into an obligation before me to the plaintiff, as required by law, in the sum of ——— dollars. Said appeal is hereby granted. And a transcript of all the entries in this cause is certified to said circuit court, which, together with all the process and all the papers relating to this suit, are filed in the clerk's office.

Cost of Robert Craig, J. P.,	\$——.
Cost of Lee H. Wilson, constable,	\$——.
Cost of Wm. McLaren, witness,	\$——.
Cost of John Kearns, witness,	\$——.
Cost of jury,	\$——.

No. 127.—Judgment by Confession.

[Section 4083.]

On this third day of May, 1884, comes the said Andrew McCarthy, as well as the said James Bidwell, and the said McCarthy files before me a note against the said Bidwell, as follows: (here copy the note); and the said Bidwell files in writing his confession of judgment, wherein he says that he is indebted to the said McCarthy in the sum of ——— dollars debt and ——— dollars interest due upon said note, and consents that judgment may be rendered against him for the same; all of which being assented to by said McCarthy, it is therefore considered that the said McCarthy recover of said Bidwell the said sum of ——— dollars for his debt and the sum of ——— dollars for his damages, and all his costs in and about this suit expended.

No. 128.—Removal of Cause to Another Justice.

[Sections 4041-4043.]

On this third day of May, 1884, the defendant (or plaintiff) files his affidavit, wherein he states that I am a material witness in his behalf (or that I am too near of kin to Henry Richmond to give me jurisdiction, or that I am so prejudiced against him that I will not administer justice to him), and praying a removal of this cause. Whereupon, it is ordered that the proceedings in this cause be certified to John Ryan, a justice of the peace of Cicero Township, which is accordingly done.

NOTE.—In Nos. 125-128 the style of the action should be given as in No. 112.

No. 129.—Removal of Cause from Another Justice.

David Streeter, plaintiff,	}
against	
Buzzell Dinsmore, defendant.	

On this third day of May, 1884, the transcript and proceedings of a cause late pending before J. C. Barnes, a justice of the peace of Eastman Township, duly certified by said justice, were filed before me; and it not being convenient for me now to proceed to try said cause, the twenty-third day of May, 1884, is fixed for the trial of the same.

On this twenty-third day of May, 1884, came said parties [then proceed as in other cases].

ADMINISTRATION.

No. 130.—*Inventory by Executor or Administrator.*

[Section 46.]

Inventory of the estate of John Desmond, deceased:

Cash on hand at death of decedent.....	\$100 00
A note on J. D., dated January 1, 18—, bearing interest at ten per centum per annum.....	100 00
Interest due thereon	10 00
Account against T. D. for corn sold and delivered.....	17 50
One horse.....	100 00
One silver watch	20 00
Forty acres of land in Pulaski County (sw nw, T 1 N, R 12 W)	500 00
A mortgage deed to lot 1, block 49, Little Rock, by E. F., to secure payment of.....	250 00
Interest due on above debt, rate three per cent. per month	50 00
Standish Acres, administrator, etc.	

No. 131.—*Affidavit to be Annexed to Inventory.*

[Section 47.]

State of Arkansas, }
County of Pulaski. }

Standish Acres, administrator of the estate of John Desmond, deceased, says that the foregoing is a full inventory and description of all the moneys, goods, chattels, books, papers and evidences of debt of the estate of said deceased, and of all debts due or becoming due thereto, as far as he has been able to ascertain them, except the property reserved as the absolute property of the widow; and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

Standish Acres, administrator, etc.

Subscribed and sworn to before me this third day of May, 1884.

Henry Keeling, Clerk.

No. 132.—*Affidavit by Appraisers.*

[Section 53.]

State of Arkansas, }
County of Pulaski. }

John Dean, John Doe and Richard Roe, being appointed to appraise the personal estate of John Desmond, deceased, before entering on their duties, severally make oath and say that they are householders of said county; that they are not interested in said estate, nor of kin to any person interested therein as heir or legatee; and that they will, to the best of their ability, view and appraise the personal property to them produced.

[Signatures of appraisers.]

No. 133.—*Certificate of Appraisalment of the Estate of John Desmond, Deceased.*

[Section 54.]

One horse, appraised at	\$100 00
One silver watch, appraised at.....	20 00
Total value.....	\$120 00
Given under our hands this — day of —, 18—.	

[Signatures of appraisers (or two of them).]

No. 134.—*Notice of the Grant of Letters of Administration.*

[Section 60.]

Administrator's Notice.

Letters of administration on the estate of John Desmond, deceased, were granted to the undersigned, dated the twentieth day of January, 1884, by the Circuit Court of Pulaski County.

All persons having claims against said estate are required to exhibit them, properly authenticated for allowance, to the administrator, within one year after the date of said letter, or they may be precluded from any benefit in said estate; and if such claims be not exhibited within two years from the date of said letters, they shall be forever barred and precluded from any benefit from said estate.

Standish Acres, administrator of estate of John Desmond, deceased.

Little Rock, Pulaski County, February 1, 1884.

No. 135.—*Application for Administration.*

[Sections 15, 16.]

State of Arkansas, }
County of Pulaski. } In the Matter of John Desmond's Estate.

Standish Acres says, that, to the best of his knowledge and belief, the value of the estate of the said John Desmond, who died in said county, of which he was a resident, on or about the third day of May, 1884, is ——— dollars; that the heirs of said John Desmond, deceased, are George Desmond, who resides in the County of Washington, in the State of Arkansas; Caroline Desmond, who resides in the County of Bourbon, in the State of Kentucky; and Ann Brown, late Ann Desmond, who resides in the County of Calloway, in the State of Missouri; that said John Desmond died without a will; that he will make a perfect inventory of and faithfully administer all and singular the goods and chattels, rights and credits, of the said deceased, and pay his debts, as far as the assets which may come to his hands will extend and the law direct; and that he will account for and pay over, according to law, all assets which shall come to his hands or possession.

Standish Acres.

Subscribed and sworn to before me this twentieth day of May, 1884.

Henry Keeling, Clerk.

No. 136.—*Bond of Administrator.*

[Sections 18, 19.]

We, Standish Acres as principal, and Robert Connor and James Hart as securities, acknowledge ourselves to be indebted to the State of Arkansas in the sum of ——— dollars (double the value of the estate).

[Here copy condition from section 19.]

In witness whereof we have hereto subscribed our names this ——— day of ———, 18—.

Standish Acres,
Robert Connor,
James Hart.

No. 137.—*Sale Bill by Administrator.*

[Sections 84, 85.]

Sale bill of the estate of Joseph Newton, deceased, sold at public outcry by T. J. Jamieson, auctioneer, on the second day of May, 1884, for Theodore Eaton, administrator of said estate:

One horse, sold to David Oliphant	\$100 00
One silver watch, sold to William Mill	20 00

\$120 00

Attest: John Thurley, Clerk of the sale.

State of Arkansas, }
County of Pulaski. }

John Thurley says that he was clerk of the sale made by Theodore Eaton, administrator of the estate of Joseph Newton, deceased, and that the foregoing list is a true account of said sale so made by said administrator at the time therein specified.

John Thurley, Clerk.

Subscribed and sworn to before me this third day of May, 1884.

John R. Clark, J. P.

No. 138.—*Settlement of Administrator—First Annual Settlement.*

[Section 121.]

Theodore Eaton, administrator of the estate of Joseph Newton, in account with said estate:

	Dr.	Cr.
To amount of cash on hand at death of decedent.....	\$100 00	
To note on J. D., and interest to this date.....	120 00	
To account against T. D., for corn.....	17 50	
To one horse (as per sale bill).....	100 00	
To one silver watch (as per sale bill).....	20 00	
To mortgage by E. F., and interest to this date.....	450 00	
By cash paid funeral expenses, vouchers Nos. 1 and 2.....		\$20 00
By account against T. D. (unavailable, worthless).....		17 50
By charges for services as administrator, voucher No. 3.....		2 00
	<u>\$807 50</u>	<u>\$39 50</u>
	39 50	
Balance in favor of estate.....	\$768 00	

No. 139.—*Citation of Next of Kin to Administer.*

[Sections 7, 8.]

In the matter of Joseph Newton's estate.

John Tippet is notified, on the application of Wm. Barlow, a person interested in the estate aforesaid, to take letters of administration on said estate within ten days after the service of this citation, or, on failure so to do, letters of administration thereon will be granted to the person next entitled thereto.

Witness my hand and seal of office this third day of May, 1884.

Joseph Snow, Clerk.

No. 140.—*Exhibition of Claim against an Estate for Approval of Administrator.*

[Sections 101-111.]

To Theodore Eaton, administrator of the estate of Joseph Newton, deceased:

You will take notice that the undersigned has a demand against said estate for the sum of fifty dollars and ten cents, founded on an [account or note, or other instrument of writing], the original of which is herewith exhibited to you, and of which the following is a copy [here copy]. [If the claimant holds the demand as an assignee, insert in the notice as follows.] And on which demand is an assignment, of which the following is a copy [here copy assignment].

This third day of May, 1884.

Henry Farrar.

No. 141.—*Affidavit to be Appended to above Notice.*

[Section 102.]

State of Arkansas, }
County of Pulaski. }

I, Henry Farrar, do solemnly swear that nothing has been paid or delivered toward the satisfaction of the above demand, except what is credited thereon, and that the sum of fifty dollars and ten cents, as above demanded, is justly due.

Henry Farrar.

Subscribed and sworn to before me, a justice of the peace within the state aforesaid, on this third day of May, 1884.

Edward Kreigh, J. P.

[Indorsed.]

Executed this notice by delivering a copy of the same, and at the same time exhibiting the original therein mentioned to Theodore Eaton, on this tenth day of May, 1884.

Anthony Kennedy, Sheriff of — County, Arkansas.

No. 142.—Form of Notice where Administrator Refuses to Approve and Allow such Claim.

[Sections 112, 113.]

To Theodore Eaton, administrator of the estate of Joseph Newton, deceased:

You will take notice that I shall present for allowance, at the next term of the probate court of — county, to be holden at the court-house in said county, on the — day of — next, and on the first day thereof, or as soon thereafter as I can be heard, a demand against said estate, founded on an [account, note or other writing, as the case may be], of which the following is a copy [here copy]. [If the claimant hold the demand as an assignee, insert as follows.] And on which demand is an assignment, of which the following is a copy, to wit: [Here copy assignment.]

This third day of May, 1884.

Henry Farrar.

[Indorsed.]

Executed this notice by delivering a copy of the same to Theodore Eaton on the fifth day of May, 1884.

Anthony Kennedy, Sheriff of — County, Arkansas.

CONVEYANCING.

No. 143.—Deed of Conveyance, with Covenants of General Warranty.

Know all men by these presents, that I, A. B., of —, in the County of —, in consideration of — dollars, to me paid by C. D., of —, in the County of —, in the State of Arkansas, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said C. D. and his heirs a certain tract or parcel of land situate in — aforesaid, bounded and described as follows [describe land], with all the privileges and appurtenances thereunto belonging.

To have and to hold the afore-granted premises to the said C. D., and his heirs, in fee simple, forever; and I, the said A. B., for myself and my heirs, executors and administrators, do covenant with the said C. D., and his heirs and assigns, that I am lawfully seized in fee of the afore-granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C. D., as aforesaid; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said C. D., and his heirs and assigns, forever against the lawful claims and demands of all persons.

And for the consideration aforesaid, and for divers other good and valuable considerations, I, H. B., wife of the said A. B., do hereby release and quit-claim unto the said C. D., his heirs and assigns, all my right, claim or possibility of dower in or out of the afore-described premises.

In witness whereof, we, the said A. B. and H. B., have hereunto set our hands this tenth day of May, 1884.

No. 144.—Acknowledgment by one Grantor.

[Section 656.]

State of Arkansas,
County of —. }

On this — day of —, 18—, before me, —, a justice of the peace within and for the county of —, in the State of Arkansas, appeared in person —, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In testimony whereof, I have hereunto set my hand as such justice of the peace, in the County of —, on the — day of —, 18—.

James Hutchins, J. P.

NOTE.—If the grantor is unknown to the justice, instead of the words "to me personally well known as the person," say, "who, being unknown to me, was proven to my satisfaction to be the identical —, whose name appears upon the within and foregoing deed as the party grantor, by the oath of — and —, witnesses, sworn and examined by me as to such identity, and stated, etc.

No. 145.—Proof of Deed by Subscribing Witness.

[Section 657.]

State of Arkansas,
County of —. }

Be it remembered, that on this — day of —, 18—, before me, —, a justice of the peace in and for the county aforesaid, personally appeared —, one of the subscribing witnesses to the fore-

going deed, to me personally well known, who, being by me first duly sworn, on his oath stated that he saw ———, grantor in said deed, subscribe said deed on the day of its date [or that the said ———, grantor in said deed, acknowledged in his presence, on the ——— day of ———, 18—, that he had subscribed and executed said deed], for the uses, purposes and consideration therein expressed; and that he and ———, the other subscribing witness, subscribed the same as attesting witnesses at the request of said grantor.

In testimony whereof, I have hereunto set my hand as such justice of the peace, at the county aforesaid, this ——— day of ———, 18—.

James Hutchins, J. P.

NOTE.—See note to form No. 144.

No. 146.—Proof of Handwriting of Grantor and Subscribing Witness.

[Section 658.]

State of Arkansas,
County of ———.

Be it remembered, that on this third day of May, 1884, before me, Timothy Kavanaugh, a justice of the peace in and for the county aforesaid, came ——— and ———, and upon their oaths stated that the signatures of ———, the grantor in the within and foregoing deed, and of ———, a witness thereto, are genuine, and are in the handwriting of the said ——— and ——— respectively.

In testimony whereof, I have hereunto set my hand as such justice of the peace, at the county aforesaid, this third day of May, 1884.

Timothy Kavanaugh, J. P.

No. 147.—Acknowledgment by Husband and Wife of a Joint Deed for the Wife's Land.

[Section 659.]

State of Arkansas,
County of ———.

On this third day of May, 1884, before me, John Walker, a justice of the peace within and for the County of ———, in the State of Arkansas, appeared in person ———, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as one of the parties grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on this day voluntarily appeared before me ———, wife to the said ———, to me well known to be the person whose name appears upon the within and foregoing deed, and, in the absence of her said husband, declared that she had of her own free will executed the same, for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand as such justice of the peace, in the County of ———, on the third day of May, 1884.

John Walker, J. P.

NOTE.—This is the proper form when the property conveyed was acquired before the adoption of the constitution of 1874. If the property was acquired by the wife since the thirtieth day of October, 1874, she may convey it without her husband joining, and her acknowledgment of such separate conveyance must be according to the form given in No. 144. See note to SEC. 648.

No. 148.—Acknowledgment by Husband and Wife of a Joint Deed for the Husband's Land.

[Section 659.]

State of Arkansas,
County of ———.

On this third day of May, 1884, before me, John Walker, a justice of the peace within and for the County of ———, in the State of Arkansas, appeared in person ———, to me personally well known as the person whose name appears upon the within and foregoing deed of conveyance as one of the parties grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on this day voluntarily appeared before me ———, wife to the said ———, to me well known to be the person whose name appears upon the within and foregoing deed, and, in the absence of her said husband, declared that she had of her own free will signed the relinquishment of

dower therein expressed, for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand as such justice of the peace, at the County of _____, on the third day of May, 1884.

John Walker, J. P.

NOTE.—See note to form No. 144.

No. 149.—*Notice to Quit.*

[Section 3348.]

To James King:

You are hereby notified that I demand that you quit, and deliver up to me (or to Henry Adams, my agent), the possession of [here describe the premises of which possession is demanded], on or before the _____ day of _____, 1884.

William Kennedy.

Dated this _____ day of _____, 1884.

NATURALIZATION.

No. 150.—*Form of Declaration of Intention to Become a Citizen.*

State of Arkansas, sct.

In the Pulaski Circuit Court.

This day Patrick O'Flanagan, an alien, personally appeared in court, and upon his solemn oath made the following declaration of his intention to become a citizen of the United States: That he came to the United States on the twentieth day of January, 1866, from the County of Donegal, in Ireland; that it is *bona fide* his intention to become a citizen of the United States, and to renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state and sovereignty whatever, and particularly all allegiance and fidelity to Victoria, Queen of Great Britain, of whom he was a subject; which is ordered to be certified.

[L. s.] In witness whereof, etc.

W. F. Blackwood, Clerk P. C. C.

[The foregoing form may be so altered as to suit a case where the declaration of intention is made before the clerk.]

No. 151.—*Form of Naturalization Certificate.*

State of Arkansas, sct.

In the Pulaski Circuit Court.

This day William Gladstone, a native of England, came into court, and produced a certificate of the Jefferson Circuit Court, duly authenticated, showing that he had, on the ninth day of September, 1866, in that court, made the necessary declaration of his intention to become a citizen of the United States, and declared, upon his solemn oath, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state and sovereignty whatever, and particularly all allegiance and fidelity to Victoria, Queen of Great Britain, of whom he was before a subject; and having adduced satisfactory proof (by the testimony of Paul Greenwood and Charles Miller, citizens of the United States, who were examined on their oaths as witnesses) that he has resided in the United States five years, at least, and in this state one year last past, and that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same, it is therefore ordered that the said William Gladstone be and he is hereby duly admitted and declared to be a citizen of the United States of America.

[L. s.] In witness whereof, etc.

W. F. Blackwood, Clerk P. C. C.

No. 152.—*Form of Certificate for Minor, without Previous Declaration.*

State of Arkansas, sct.

In the Pulaski Circuit Court.

This day Lambton Lorraine, a native of England, who came to the United States a minor under the age of twenty-one years, personally appeared in court, and, upon his solemn oath, declared that it is *bona fide* his intention to become a citizen of the United States, and to renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state and sovereignty whatever, and particularly to Victoria, Queen of Great Britain, of whom he was a subject, and that such has been his intention for the last three years past; and declared, on his solemn oath, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state and sovereignty whatever, and particularly all fidelity and allegiance to Victoria, Queen of Great Britain; and having adduced satisfactory proof to the court (by the testimony of Abraham McCutcheon and William Emerson, citizens of the United States, who were examined on their oaths as witnesses) that he has resided in the United States five years, at least, and in this state one year last past; that during three years out of the period of five years he was a minor under the age of twenty-one years, and that during the said period of five years he has behaved himself as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; it is therefore ordered that said Lambton Lorraine be and he is hereby admitted and declared to be a citizen of the United States of America.

[L. s.] In witness, etc.

W. F. Blackwood, Clerk P. C. C.

FORMS IN CRIMINAL CASES.

ARREST AND SUMMONS.

No. 153.—Indorsement on the Warrant of Arrest, where the Offense is a Misdemeanor.

[Section 1994.]

The within named John Russell is permitted to give bail in the sum of five hundred dollars, for his appearance before me, on a day to be fixed in the bail bond, for trial; and the sheriff or other officer making the arrest is authorized to take the bail.

Thomas Jamieson, J. P.

January 10, 1885.

[For form of *Warrant of Arrest*, when the offense charged is a felony, see SEC. 1993.]

No. 154.—Warrant of Arrest for Offenses in Jurisdiction of Magistrates.

[Sections 2362, 2374.]

The State of Arkansas to any Constable of Pulaski County:

You are commanded to arrest John Tippet and bring him forthwith before me to answer the charge made against him of having committed an assault and battery on the person of William Faul, in said county, on the first day of January, 1885.

Given under my hand, as justice of the peace for Pulaski County, this tenth day of January, 1885.

Harold J. Galpin, J. P.

NOTE.—If the warrant is for any other offense, describe it briefly, as in the form here given.

No. 155.—Summons on Forfeited Bail Bond.

[Section 2068.]

The State of Arkansas to the Sheriff of Pulaski County:

You are commanded to summon Walter Hawes to appear in the Pulaski Circuit Court, on the first day of its next (March) term, which will be on the first day of March, 1885, to show cause why judgment should not be entered against him for one thousand dollars, on account of the forfeiture of the bail bond executed by him for the appearance of William Squire in said court to answer an indictment found against him in said court.

[L. s.] Witness my hand and the seal of said court this tenth day of January, 1885.

W. F. Blackwood, Clerk.

No. 156.—Complaint to Procure Another to be Bound to Keep the Peace.

[Section 2395.]

County of Pulaski.

I, George French, do solemnly swear that Henry Brookins has threatened (or, is about) to commit an assault and battery upon Joseph Newton (or, commit a trespass upon his lands, or any other offense, which

(1292)

must be specially stated), and pray that a warrant may issue to apprehend said Henry Brookins and bring him before a justice of the peace, to be dealt with according to law.

George French.

Sworn to and subscribed before me this third day of May, 1885.

Harold J. Galpin, J. P.

No. 157.—Warrant to Apprehend a Person who has Threatened, or is about, to Commit an Offense.

[Section 2397.]

The State of Arkansas to any constable or peace officer of Pulaski County:

It appearing that there are reasonable grounds for believing that Henry Brookins has threatened (or, is about) to commit an assault and battery upon Joseph Newton (or, to commit a trespass upon the lands of Joseph Newton, or any other offense, which must be specially stated), you are, therefore, hereby commanded that you forthwith apprehend the said Henry Brookins and bring him before me, to be dealt with according to law. Hereof fail not, and make due return of this writ.

Given under my hand this third day of May, 1885.

Harold J. Galpin, J. P.

No. 158.—Bond to Keep the Peace.

[Section 2401.]

We acknowledge ourselves indebted to the State of Arkansas in the sum of five hundred dollars, to be void upon condition that, whereas, Henry Brookins has been brought before Harold J. Galpin, a justice of the peace in and for the County of Pulaski, upon a charge that said Henry Brookins has threatened (or, is about) to commit an assault and battery upon Joseph Newton (or any offense, which must be specially stated).

Now, if the said Henry Brookins shall appear before the circuit court of said county on the first day of the next term thereof, and shall not depart the same without leave, and in the mean time shall keep the peace toward the people of this state, and particularly toward the said Joseph Newton, then this bond to be void.

Henry Brookins,
Charles Hicks,
Robert Woolford.

No. 159.—Warrant of Commitment of Person Refusing to Enter into Bond to Keep the Peace.

[Section 2405.]

County of Pulaski,

The State of Arkansas to the Sheriff, etc.:

Whereas, Isaac George has been brought before me, one of the justices of the peace in and for said county, upon the complaint of Walter McDonald, charging that said Isaac George has threatened (or, is about) to commit an assault and battery upon him, the said Walter McDonald (or any other offense); and whereas, it appearing to me that there is reason to fear that said offense will be committed by said Isaac George, he has been required to enter into bond, with sufficient sureties, in the sum of five hundred dollars, to appear before the circuit court in and for the said county on the first day of the next term thereof, and not to depart the same without leave, and in the mean time to keep the peace toward the people of this state, and particularly toward the said Walter McDonald, to enter into which said bond the said Isaac George has failed (or refused); therefore, he is committed to the jail of said county, there to remain in custody until he shall enter into such bond, or be otherwise discharged by due course of law.

Given under my hand this fourth day of May, 1885.

Harold J. Galpin, J. P.

No. 160.—Warrant of Commitment after Examination, in Case Not Bailable.

[Section 2033.]

County of Pulaski.

The State of Arkansas to the Sheriff of Pulaski County, greeting:

Whereas, Michael McDonald, having been apprehended and brought before the undersigned, a justice of the peace in and for said county, on the fourth day of May, 1885, and it hath appeared to said justice that the said

FORMS IN CRIMINAL CASES.

Michael McDonald did, on the first day of May, 1885, commit the crime of murder; and whereas, it hath also appeared to said justice that said offense so committed is not bailable; therefore, the said Michael McDonald is committed to the jail of said County of Pulaski, there to remain in custody until he shall be made to answer the said charge according to law, or be otherwise discharged by due course of law.

Given under my hand this fourth day of May, 1885.

Harold J. Galpin, J. P.

[For Order of Commitment on Failure to Give Bail, see note to SEC. 2038.]

No. 161.—*Affidavit to Obtain a Change of Venue.*

[Section 2378.]

County of Franklin,
White Oak Township. } Before Henry Wilkins, justice of the peace for said township.

State of Arkansas, plaintiff, }
against }
John Smith, defendant. }

The defendant, John Smith, on oath, states that the inhabitants of White Oak Township are so prejudiced against him (or that Henry Wilkins, the justice before whom the above entitled cause is pending, is a material witness for him, or is so prejudiced against him) that he can not obtain a fair and impartial trial in said township. He therefore asks that an order be made for the removal of this cause to some other township in said county.

John Smith.

Subscribed and sworn to before me this tenth day of January, 1885.

Henry Wilkins, J. P.

John Doe says he believes the statements of the foregoing application are true.

John Doe,

Subscribed and sworn to before me, the tenth day of January, 1885.

Henry Wilkins, J. P.

DOCKET ENTRIES IN CRIMINAL CASES.

No. 162.—In Prosecution by Warrant—Issuance of Process, etc.

State of Arkansas, plaintiff, }
against
John Smith, defendant. }

On this tenth day of January, 1885, comes Henry Jones, and made complaint before me, on oath, that said John Smith, on the first day of January, 1885, in the County of Franklin, did [insert here a brief description of the offense, as in No. 154], and said Jones having given bond, with Thomas Ramsey as his security, for the payment of all the costs which may accrue in this prosecution, a warrant for the arrest of said Smith was thereupon issued.

NOTE.—If the person complaining makes an affidavit that he is unable to give a bond, with security for the costs, and a warrant is issued under the provisions of section 231, without requiring such bond, the entry may proceed as follows after the words in brackets :

And the said Jones having made affidavit that he is unable to give security for the costs of this prosecution, and it appearing to me that there are strong reasons for believing that the said Jones has been, in plain violation of the criminal laws of this state, maltreated in his person (or "in his property," as the case may be) by the said John Smith, he was permitted to prosecute in this cause without giving bond for such costs, and a warrant for the arrest of said Smith was thereupon issued.

No. 163.—Order Removing Cause to Another Township.

[Section 2380.]

State of Arkansas, plaintiff, }
against }
John Smith, defendant. }

This day came the said parties, and the defendant, John Smith, filed his application for the removal of this cause to some other township in Franklin County, and for cause of such removal states in said application

that the inhabitants of White Oak Township are so prejudiced against him that he can not obtain therein a fair and impartial trial. And said application being verified by the affidavit of said defendant, and supported by the affidavit of John Doe, a credible person, it is therefore ordered by me that this cause be removed to Hogan Township, in said county, and before Henry Elkins, a justice of the peace therein.

No. 164.—Judgment for Fine, etc.

[Sections 2318, 2336, 2350 and 1213.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

On this — day of January, 1885, comes the defendant, John Smith, and pleads that he is not guilty of the offense charged in the warrant, and demands a trial by jury; and thereupon a jury of twelve good and lawful men of the County of Franklin were summoned, selected, sworn and impaneled according to law to try the issue herein, and a true verdict render, who, having heard the evidence, returned the following verdict: "We, the jury, find the defendant guilty, and assess his punishment at a fine of twenty dollars."

It is therefore adjudged by the court that the plaintiff recover of the defendant the said sum of twenty dollars, and the costs of this prosecution, and that, unless said fine and costs be immediately paid, the constable shall proceed at once to hire out said defendant, according to law, for a period not exceeding one day for each seventy-five cents of said fine and costs until the same are paid; and it is further adjudged that if said defendant can not be so hired out, then that he be imprisoned in the county jail until said fine and costs be paid, not exceeding one day for each seventy-five cents of said fine and costs.

NOTE.—If a contract has been made by the county court for keeping and working prisoners, then the judgment should direct that the defendant be delivered to the contractor, to be kept and worked by him for such time as will discharge the fine and costs, at fifty cents per day, as provided in section 1235. If no such contract has been entered into, and the county has a work-house, the judgment may, and probably should, direct that the defendant be put to work in such house, or on the farm thereto attached, or on any public improvement of the county, as directed in section 1210.

No. 165.—Order Granting an Appeal.

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

On this — day of —, 18—, the defendant, John Smith, prayed an appeal to the Circuit Court of Franklin County, and said defendant, and John Doe as his security, executed before me a bond to the plaintiff, conditioned as required by law, and which was by me approved. Said appeal is therefore hereby granted; and the said appeal bond, and a transcript of all the entries in this cause, together with all the process and papers therein, are filed in the office of the clerk of said court.

Cost of Henry Wilkins, J. P.,	\$ —.
Cost of John Hudson, Constable,	\$ —.
Cost of C. D., witness,	\$ —.
Cost of E. F., witness,	\$ —.
Cost of jury,	\$ —.

NOTE.—The certificate to the justice's transcript may be substantially in the form given in No. 109.

MINUTES OF EXAMINING COURT.

No. 166.

State of Arkansas }
 against } Before Thaddeus Cress, justice of the peace for Big Rock Township, County of Pulaski,
 Walter Morrison. } August 18, 1894.

The defendant, Walter Morrison, having been brought before me, the undersigned justice of the peace, charged with the offense of —, and being informed of the nature of the offense charged against him, moved an adjournment of examination until Friday, the twentieth day of this month, to procure the aid of counsel and the attendance of witnesses, which motion was sustained; and in the mean time he is committed to the jail of Pulaski County (or to the custody of the sheriff of Pulaski County).

[If the offense is a misdemeanor, and the defendant desires to give bail or deposit money in lieu of bail, an entry of the fact should be made on the minutes.]

No. 167.—Entry on Minutes of Examining Court of Deposit in Lieu of Bail.

The defendant, Walter Morrison, deposited in the hands of William S. Oliver, sheriff of Pulaski County, six hundred dollars, in lieu of bail, for his appearance before this court for an examination of the charge against him of having —, and for his rendering himself amenable to the orders and process of this court in the prosecution of said charge.

August 20, 1884.

Pursuant to adjournment, the defendant is before the court, and, the parties being ready, the defendant moved that the witnesses be examined separately; whereupon, all the witnesses, except the one under examination, were removed out of hearing of the witness under examination.

Thomas Cox, a resident of the City of Little Rock, being sworn and examined on behalf of the state, testified: [The law requires that the magistrate shall state the name and place of residence of each witness, and shall make a general statement of the substance of what was proved, and file the same with the proceedings.]

John Jones, a resident of the Town of Benton, Saline County, being sworn and examined on behalf of the state, testified:

The court having heard the evidence and the arguments of counsel, and being of opinion that there is not sufficient cause for believing that the defendant has committed a public offense, it is ordered that he be discharged, or,

The court having heard the evidence and the arguments of counsel, and being of opinion from the examination that there are reasonable grounds to believe the defendant guilty of the offense charged against him, of having —, it is ordered that he be held for trial in the Criminal Court of Pulaski County, and allowed to give bail in the sum of — dollars; and, not giving bail, he is committed to the jail of Pulaski County.

The witnesses on behalf of the state, Thomas Cox and John Jones, and the witnesses on behalf of the defendant, James Thompson and Joseph Sanders, entered into recognizances for their appearance in the Criminal Court of Pulaski County.

The warrant of arrest (the bail bond, etc., etc., see SEC. 2040) and recognizances of the witnesses accompany these minutes.

Thaddeus Cress, J. P.

No. 168.—Order of Commitment During the Adjournment of the Examining Court.

[Section 2023.]

The State of Arkansas to the jailer of Pulaski County:

You are to receive Walter Morrison into the jail of Pulaski County, and him safely keep until the twentieth day of August, 1884, when you will deliver him to the sheriff or other peace officer of Pulaski County, to be brought again before me for an examination of the charge of —, for which he is in custody.

Given under my hand, as justice of the peace of Pulaski County, this eighteenth day of August, 1884.

Thaddeus Cress, J. P.

[For form of Order of Commitment for Trial, see SEC. 2023.]

BAIL.*No. 169.—Bail Bond to Appear Before a Magistrate for Trial in Case of Misdemeanor.*

[Sections 1994, 1995.]

Dennis J. Callahan having been arrested under a warrant of arrest, on the charge of an assault and battery, in Pulaski County, and being permitted to give bail in the sum of five hundred dollars, now we, John Kearns, of Jefferson County, and John Buchanan, of Pulaski County, Arkansas, undertake that the said Dennis J. Callahan will appear before Ethelbert Basye, Esq., a justice of the peace of Pulaski County, on the twentieth day of January, 1885, to answer the charge specified in said warrant, and then and there surrender himself into custody, and will not depart without being lawfully discharged; and, if he fail to perform either of these conditions, we will pay to the State of Arkansas the sum of five hundred dollars.

John Kearns,
John Buchanan.

January 15, 1885.

Attest: Joseph Newton, Sheriff of Jefferson County.

No. 170.—Recognizance in Open Court.

[Sections 2051, 2052.]

State of Arkansas
against
John Doe, defendant. } Recognizance.

John Brown, of Jefferson County, and Henry King, of Pulaski County, personally appeared in open court and acknowledged themselves jointly indebted to the State of Arkansas in the sum of five hundred dollars, to be void, however, if John Doe appear in the Pulaski Circuit Court on the first day of its next (March) term [or any day of the same term], to answer the indictment for felony [or misdemeanor] pending in said court against him, and shall not depart without leave of the court.

No. 171.—Recognizance of Person for a Misdemeanor Committed in Another County.

[Sections 1994, 2011.]

County of Pulaski.

State of Arkansas
against
John Doe, defendant. } Recognizance.

Be it remembered that on this fourth day of May, 1885, before Thomas Jamieson, a justice of the peace in and for said county, came Ralph Goodrich and John Walker, and acknowledged themselves to owe the State of Arkansas the sum of five hundred dollars, conditioned as follows:

That, whereas, the said John Doe has been arrested in said County of Pulaski, and brought before the said justice, upon a charge that he did, on, etc., at the County of White [here describe the offense]. Now, if the said John Doe shall be and appear before the circuit court in and for said County of White on the first day of the next term thereof [or before A. B., a justice of the peace in and for said county], to be holden on, etc., at, etc., in said County of White, to answer said charge, and shall not thence depart without leave of said court, then this recognizance to be void.

John Doe,
Ralph Goodrich,
John Walker.

NOTE.—If the offense charged is a felony, it is the duty of the magistrate to commit the defendant to a peace officer, to be conveyed before a magistrate of the county in which the offense was committed. SEC. 2011.

ATTENDANCE OF WITNESSES.*No. 172.—Recognizance for Witness.*

[Sections 2036, 2037.]

State of Arkansas
against
John Doe, defendant. } Recognizance.

A. B. and C. D. personally appeared in open court, and severally acknowledged themselves indebted to the State of Arkansas in the sum of two hundred and fifty dollars each, to be void, however, upon their sever-

ally appearing in the Pulaski Circuit Court on the first day of the next (March) term, to testify on behalf of the plaintiff [or defendant] in the above-named prosecution, and not departing without leave of the court.

No. 173.—Subpoena for Witness to Attend an Examining Court.

[Section 2021.]

The State of Arkansas to any peace officer of Pulaski County :

You are commanded to summon A. B. and C. D. to appear before me at my office, in the City of Little Rock, on the fifteenth day of January, 1885, to testify on behalf of the plaintiff [or defendant] on an examination against John Doe of having committed a felony.

Witness my hand this tenth day of January, 1885.

John McDaniel, J. P.

No. 174.—Subpoena from Circuit Court.

[Section 2143.]

The State of Arkansas to the Sheriff of Pulaski County :

You are commanded to summon A. B. and C. D. to appear in the Pulaski Circuit Court on the first day of its next (March) term, which will be the — day of March, 1885 [or such day as the case may be set for trial], to testify in behalf of the plaintiff [or defendant] in the case of the State of Arkansas against John Doe.

[L. s.] Witness my hand and the seal of said court this tenth day of January, 1885.

Thomas Fenton, Clerk.

INDICTMENTS.

No. 175.—Indictment for Murder in the First Degree.

Johnson Circuit Court.

State of Arkansas }
against } Indictment.
William Hardie. }

The grand jury of Johnson County, in the name and by the authority of the State of Arkansas, accuse William Hardie of the crime of murder in the first degree, committed as follows, to wit: The said William Hardie, on the first day of March, 1884, in the County of Johnson aforesaid, feloniously, willfully, deliberately and of his malice aforethought and with premeditation, did kill and murder Harry T. Clements, by shooting him on the head and body of him, the said Harry T. Clements, with a pistol loaded with a leaden bullet or other hard substance, against the peace and dignity of the State of Arkansas.

A. G. C., Prosecuting Attorney.

Witnesses: { John Cornwall,
George Shea.

No. 176.—Indictment for Murder in the Second Degree.

Pulaski Circuit Court.

State of Arkansas }
against } Indictment.
John Doe. }

The grand jury of Pulaski County, in the name and by the authority of the State of Arkansas, accuse John Doe of the crime of murder in the second degree, committed as follows, viz.: The said John Doe, on the fifteenth day of January, 1884, in the county aforesaid, did feloniously, and with malice aforethought, kill and murder John Smith, by stabbing him with a knife, against the peace and dignity of the State of Arkansas.

William Gay, Prosecuting Attorney.

Witnesses: { Richard Roe,
Thomas Knox.

No. 177.—*Indictment for Manslaughter.*

Pulaski Circuit Court.

State of Arkansas }
 against } Indictment.
 John Doe. }

The grand jury of Pulaski County, in the name and by the authority of the State of Arkansas, accuse John Doe of the crime of manslaughter, committed as follows, viz.: The said John Doe, on the tenth day of January, 1884, in the county aforesaid, did feloniously and willfully kill John Smith, by stabbing him with a knife, against the peace and dignity of the State of Arkansas.

Wm. Gay, Prosecuting Attorney.

Witnesses: { Richard Roe,
 Thomas Knox.

No. 178.—*Indictment for Rape.*

Pulaski Circuit Court.

State of Arkansas }
 against } Indictment.
 John Doe. }

The grand jury of Pulaski County, in the name and by the authority of the State of Arkansas, accuse John Doe of the crime of rape, committed as follows, viz.: The said John Doe, on the tenth day of January, 1884, in the county aforesaid, feloniously, forcibly, unlawfully and against her consent, carnally knew Emma Dean, against the peace and dignity of the State of Arkansas.

William Gay, Prosecuting Attorney.

Witnesses: { Richard Roe,
 Emma Dean and
 Thomas Knox.

No. 179.—*Indictment for Robbery.*

Pulaski Circuit Court.

State of Arkansas }
 against } Indictment.
 John Doe. }

The grand jury of Pulaski County, in the name and by the authority of the State of Arkansas, accuse John Doe of the crime of robbery, committed as follows, viz.: The said John Doe, on the tenth day of January, 1884, in the county aforesaid, feloniously and violently took a gold watch, the property of Richard Roe, of the value of ten dollars, from the person of the said Richard Roe, and against his will, against the peace and dignity of the State of Arkansas.

William Gay, Prosecuting Attorney.

Witnesses: { Richard Roe,
 Thomas Knox.

No. 180.—*Indictment for Perjury.*

Pulaski Circuit Court.

State of Arkansas }
 against } Indictment.
 John Doe. }

The grand jury of Pulaski County, in the name and by the authority of the State of Arkansas, accuse John Doe of the crime of perjury, committed as follows, viz.: The said John Doe, on the tenth day of January, 1884, in the county aforesaid, on his examination as a witness, duly sworn to testify the truth, the whole truth, and nothing but the truth, on the trial of a civil action in the Pulaski Circuit Court between John Brown, plaintiff, and Richard Roe, defendant, which court had authority to administer such oath, feloniously, falsely and corruptly testified that [here insert the statements alleged to be false]; the matter so testified being material, and the testimony being willfully and corruptly false, against the peace and dignity of the State of Arkansas.

William Gay, Prosecuting Attorney.

Witnesses: { Richard Roe,
 Thomas Knox.

PLEADINGS OF THE DEFENDANT.

No. 181.—*Demurrer.*

[Section 2178.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

The defendant demurs to the indictment.

No. 182.—*Plea.*

[Section 2178.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

The defendant pleads that he is guilty of the offense charged in the indictment.

Or—No. 183.

The defendant pleads that he is not guilty of the offense charged in the indictment.

Or—No. 184.

The defendant pleads that he has been acquitted of the offense charged in the indictment, by the judgment of the Pulaski Circuit Court, rendered on the first day of March, 1884.

Or—No. 185.

The defendant pleads that he has been convicted of the offense charged in the indictment, by the judgment of the Perry Circuit Court, rendered on the first day of March, 1884.

ORDERS OF COURT.

No. 186.—*Order for Process on Indictment.*

[Sections 2134, 2142.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

It is ordered that a bench warrant issue for the arrest of the defendant, allowing him to give bail in the sum of ——— dollars.

Or—No. 187, if the Offense is Not Bailable.

It is ordered that a bench warrant issue for the arrest and committal to jail of the defendant.

Or—No. 188.

It is ordered that a summons issue on the indictment herein.

No. 189.—Order for a Bench Warrant after Defendant Has Given Bail.

[Section 2138.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

It appearing that the defendant has failed to appear in pursuance of the undertaking of his bail (or, that the bail taken herein is insufficient, or, that the offense for which defendant is indicted is not bailable), it is ordered that a bench warrant issue for the arrest of the defendant, allowing him to give bail in the sum of ——— dollars (or, that a bench warrant issue for the arrest and committal to jail of the defendant, if the offense is not bailable).

No. 190.—Order upon Ascertaining the Plaintiff's True Name.

[Section 2110.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

It appearing to the satisfaction of the court that the defendant's name is John Jones, it is ordered that the further proceedings in this case shall be in defendant's true name of John Jones, indicted by the name of John Smith.

No. 191.—Order Setting Aside an Indictment and Ordering the Case to be Submitted to Another Grand Jury.

[Section 2158.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

The defendant moved the court to set aside the indictment, on the ground that the grand jury had been illegally summoned and impaneled [or other grounds, according to the facts], and, the court being sufficiently advised, it is ordered that the indictment be set aside, and the charge against the defendant submitted to another grand jury, and the defendant be committed to jail to await the action of such grand jury [or that the defendant be admitted to give bail in the sum of ——— dollars for his appearance to answer the charge].

No. 192.—Order for the Removal of the Defendant to Another County on Its Appearing that the Offense Was Committed in Such County.

[Sections 2163, 2166, 2276.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

It appearing to the satisfaction of the court that the offense charged in the indictment was committed in Jefferson County, it is ordered that the jury herein be discharged, and that the clerk transmit to the clerk of the Jefferson Circuit Court a copy of the indictment and of this order, and also all the original papers of the prosecution, including the bail bond (if any), and that the sheriff carry and deliver the defendant, with a copy of this order, to the jailer of Jefferson County [or, that the defendant be required to appear in the Jefferson Circuit Court], to answer the charge (if he has given bail), or that the defendant be allowed to give bail in the sum of ——— dollars for his appearance in the Jefferson Circuit Court to answer the charge.

No. 193.—Order upon Its Appearing that the Offense Was Committed in Another State.

[Section 2277.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

It appearing to the satisfaction of the court that the offense charged in the indictment was committed in the State of Tennessee, it is ordered that the jury herein be discharged, and that the defendant be committed

to jail to await a requisition for him by the governor of Tennessee, and the prosecuting attorney is directed to give information hereof to the governor of Tennessee; but if no requisition is made for the defendant before the first day of November, 1884, he shall be discharged from jail.

No. 194.—Judgment when the Punishment is Death.

[Sections 2313, 2316.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

The defendant was this day brought into court, and, being informed of the nature of the indictment, plea and verdict, was asked if he had any legal cause to show why judgment should not be pronounced against him; and none being shown, it is adjudged by the court that the defendant be taken to the jail of Pulaski County, and there safely kept until the tenth day of September, 1884, on which day, between sunrise and sunset, the sheriff of Pulaski County shall hang him by the neck until he is dead.

No. 195.—Judgment when the Punishment is Confinement in the Penitentiary.

[Sections 2313, 2317.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

The defendant was this day brought into court, and, being informed of the nature of the indictment, plea and verdict, was asked if he had any legal cause to show why judgment should not be pronounced against him; and none being shown, it is adjudged that the defendant be taken by the sheriff of Pulaski County to the state penitentiary, and there confined at hard labor for the period of four years.

No. 196.—Judgment for a Fine and Imprisonment.

[Section 2318.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

The jury impaneled herein return the following verdict:

"We, of the jury, find the defendant guilty, and fix his punishment at a fine of one thousand dollars and confinement in the county jail for six months.

"George Schwartz, foreman."

Wherefore, it is adjudged that the plaintiff recover of the defendant the sum of one thousand dollars and the costs of this prosecution, and that the defendant be confined in the jail of Pulaski County for the period of six months; and when said period of confinement shall have terminated, unless said fine and costs have been paid, the sheriff shall proceed at once to hire out said defendant, etc. [as in form No. 164. See note to that form].

No. 197.—Judgment of Removal from Office for Malfeasance in Office.

[Section 2325.]

State of Arkansas, plaintiff, }
 against
 Albert Schwartz, Sheriff of Pulaski County, defendant. }

It appearing by the verdict that the defendant has been guilty of an offense which creates a forfeiture of his office of sheriff of Pulaski County, it is adjudged that the defendant be removed from his office of sheriff of Pulaski County, and said office is hereby adjudged to be vacant by said removal.

[If any other punishment is affixed to the offense, judgment for that punishment should precede the judgment of removal.]

APPEALS.

APPEALS TO THE SUPREME COURT.

No. 198.—Order Noting the Prayer for an Appeal, in Cases of Felony, by the Defendant.

[Section 2445.]

State of Arkansas, plaintiff, }
 against
 David Oliphant, defendant. }

The defendant prayed an appeal from the judgment herein to the supreme court.

No. 199.—Order Noting the Prayer for an Appeal, in Cases of Felony, by the State.

[Section 2441.]

State of Arkansas, plaintiff, }
 against
 David Oliphant, defendant. }

The plaintiff prayed an appeal from the decision of court rendered herein, instructing the jury that they should find for the defendant [reciting the decision from which the appeal is prayed; or, if from the final judgment, the form is the same as is given for the defendant].

No. 200.—Allowance of the Appeal by a Judge of the Supreme Court.

[Section 2445.]

State of Arkansas, plaintiff, }
 against
 David Oliphant, defendant. }

The appeal prayed herein by the defendant is allowed.

Given under my hand, as judge of the Supreme Court of Arkansas, this seventh day of May, 1884.

No. 201.—Certificate of the Appeal being Taken in Cases of Felony.

[Section 2446.]

Supreme Court of Arkansas.

David Oliphant, appellant, }
 against
 State of Arkansas, appellee. }

I, E. M. Kerrott, clerk of the Supreme Court of Arkansas, do certify that David Oliphant has this day taken an appeal, in the manner and form prescribed by law, from a judgment of the Pulaski Circuit Court, rendered at its May term, 1884, in the case of the State of Arkansas, plaintiff, against David Oliphant, defendant, for the confinement of the defendant in the state penitentiary, at hard labor, for the period of four years. It is therefore ordered that the execution of said judgment be suspended.

[L. s.] Witness my hand and the seal of said court this twentieth day of May, 1884.

E. M. Kerrott, Clerk.

No. 202.—Order Granting an Appeal in Case of Misdemeanor.

[Section 2463.]

State of Arkansas, plaintiff, }
 against
 John Smith, defendant. }

The defendant prayed an appeal from the judgment herein to the supreme court, which is granted upon condition that he lodge in the clerk's office of said court a transcript of the record in sixty days from the date of said judgment.

[The same form may be used where the appeal is prayed by the plaintiff.]

FORMS IN CRIMINAL CASES.

No. 203.—*Supersedeas Bond in Cases of Misdemeanor.*

[Section 2464.]

Pulaski Circuit Court.

State of Arkansas, plaintiff, }
 against } Bond.
 John Smith, defendant. }

The defendant, John Smith, having prayed an appeal from the judgment of the Pulaski Circuit Court, rendered herein against him at its September term, 1884, for a fine of one thousand dollars and costs, and imprisonment in the jail of Pulaski County for six months, now we covenant to and with the plaintiff that, in case said judgment is affirmed, we will pay said fine and costs, and all damages thereon, and the costs of the appeal, and that the defendant will surrender himself in execution of the judgment of imprisonment; or, if he fails to do so, that we will pay to the plaintiff two dollars for each day of the imprisonment adjudged.

Witness our hands this twentieth day of December, 1884.

John Smith,
 Joseph Newton,
 William Mill.

Approved: John R. Clark, Clerk.

[The defendant need not sign the bond; it is sufficient if signed by the sureties.]

No. 204.—*Supersedeas in Cases of Misdemeanor.*

[Section 2464.]

Supreme Court of Arkansas.

John Smith, appellant, }
 against }
 State of Arkansas, appellee. }

I, E. M. Kerrott, clerk of the Supreme Court of Arkansas, do certify that the appellant, John Smith, has taken an appeal from the judgment of the Pulaski Circuit Court, rendered at its September term, in favor of the State of Arkansas, against him, for a fine of one thousand dollars and costs, and for his imprisonment in the Pulaski County jail for six months, and has executed a supersedeas bond agreeably to law, a transcript of which, and of the record, has been filed in my office. Therefore, the execution of judgment is suspended.

Given under my hand and the seal of said court this tenth day of November, 1884.

E. M. Kerrott, Clerk.

No. 205.—*Appeals to Circuit Courts.*

[Section 2435.]

County of Franklin, }
 White Oak Township. } Before Henry Wilkins, justice of the peace for said township.

State of Arkansas, plaintiff, }
 against } Bond.
 John Smith, defendant. }

The defendant, John Smith, having prayed an appeal to the Franklin Circuit Court from the judgment rendered against him herein by Henry Wilkins, a justice of the peace of Franklin County, for a fine of ten dollars and costs, now we hereby covenant to and with the plaintiff that if said judgment is affirmed, we will pay the same and all costs of prosecution.

Witness our hands this first day of January, 1885.

John Smith,
 John Doe,
 Richard Roe.

Approved: Henry Wilkins, J. P.

NOTE.—The execution and approval of the appeal bond stays the judgment. (*Perrin, ex parte*, 41—200.) If an execution has been issued, it may be superseded by the following certificate:

No. 206.—*Supersedeas.*

State of Arkansas, plaintiff, }
 against } Before Henry Wilkins, a justice of the peace for said township.
 John Smith, defendant. }

I certify that John Smith, the defendant in the above entitled cause, has executed an appeal and supersedeas bond, with security approved by me, and has obtained an appeal to the Franklin Circuit Court from the judgment rendered by me against him, in said cause, for a fine of ten dollars and costs. The execution of said judgment is therefore suspended.

Given under my hand the first day of January, 1885.

Henry Wilkins, J. P.

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